

# **OFFICIAL CODE OF GEORGIA ANNOTATED**

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## **2013 Supplement**

Including Acts of the 2013 Regular Session of the General Assembly

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*Prepared by*

The Code Revision Commission

The Office of Legislative Counsel

*and*

The Editorial Staff of LexisNexis®



Published Under Authority of the State of Georgia

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## **Volume 35 2010 Edition**

Title 47. Retirement and Pensions

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Including Annotations to the Georgia Reports  
and the Georgia Appeals Reports

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**Place in Pocket of Corresponding Volume of  
Main Set**

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Charlottesville, Virginia**

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ISBN 978-0-327-11074-3 (set)  
ISBN 978-1-4224-6359-8

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## THIS SUPPLEMENT CONTAINS

### **Statutes:**

All laws specifically codified by the General Assembly of the State of Georgia through the 2013 Regular Session of the General Assembly.

### **Annotations of Judicial Decisions:**

Case annotations reflecting decisions posted to LexisNexis® through March 29, 2013. These annotations will appear in the following traditional reporter sources: Georgia Reports; Georgia Appeals Reports; Southeastern Reporter; Supreme Court Reporter; Federal Reporter; Federal Supplement; Federal Rules Decisions; Lawyers' Edition; United States Reports; and Bankruptcy Reporter.

### **Annotations of Attorney General Opinions:**

Constructions of the Official Code of Georgia Annotated, prior Codes of Georgia, Georgia Laws, the Constitution of Georgia, and the Constitution of the United States by the Attorney General of the State of Georgia posted to LexisNexis® through March 29, 2013.

### **Other Annotations:**

References to:

Emory Bankruptcy Developments Journal.  
Emory International Law Review.  
Emory Law Journal.  
Georgia Journal of International and Comparative Law.  
Georgia Law Review.  
Georgia State University Law Review.  
Mercer Law Review.  
Georgia State Bar Journal.  
Georgia Journal of Intellectual Property Law.  
American Jurisprudence, Second Edition.  
American Jurisprudence, Pleading and Practice.  
American Jurisprudence, Proof of Facts.  
American Jurisprudence, Trials.  
Corpus Juris Secundum.  
Uniform Laws Annotated.  
American Law Reports, First through Sixth Series.  
American Law Reports, Federal.

### **Tables:**

In Volume 41, a Table Eleven-A comparing provisions of the 1976 Constitution of Georgia to the 1983 Constitution of Georgia and a Table Eleven-B comparing provisions of the 1983 Constitution of Georgia to the 1976 Constitution of Georgia.

An updated version of Table Fifteen which reflects legislation through the 2013 Regular Session of the General Assembly.

**Indices:**

A cumulative replacement index to laws codified in the 2013 supplement pamphlets and in the bound volumes of the Code.

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### ARTICLE 1 IN GENERAL

#### **47-1-16. Public retirement systems prohibited from having insurable interest in members; prohibition on expending or obligating funds for purchase of life insurance on members; exception.**

No public retirement system in this state shall have an insurable interest in active or retired members of such retirement system. No public retirement system shall have the authority to expend or obligate funds under the control of such retirement system to purchase life insurance on its members except where all benefits are paid to a member's estate or to a beneficiary designated by the individual member. (Code 1981, § 47-1-16, enacted by Ga. L. 2012, p. 673, § 1/HB 297.)

**Effective date.** — This Code section became effective May 1, 2012.

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## ARTICLE 1

### GENERAL PROVISIONS

#### 47-2-1. Definitions.

As used in this chapter, the term:

(1) "Accumulated contributions" means the sum of all the amounts deducted from the earnable compensation of a member or paid by the member to establish or reestablish credit for service, which amounts are credited to the member's individual account in the annuity savings fund, together with regular interest thereon. Beginning July 1, 1980, "accumulated contributions" also includes the amount of employee contributions paid by the employer on behalf of the employee and credited to the employee's individual account in the annuity savings fund, together with regular interest thereon, excluding employee contributions paid by the employer or the employee for group term life insurance.

(2) "Actuarial equivalent" means a benefit of equal value when computed at regular interest upon the basis of the mortality tables last adopted by the board of trustees.

(3) "Annuity" means annual payments for life derived from the accumulated contributions of a member.

(4) "Annuity reserve" means the present value of all payments to be made on account of an annuity, or benefit in lieu of an annuity, computed at regular interest upon the basis of the mortality tables last adopted by the board of trustees.

(5) "Annuity savings fund" means the fund set forth under Code Section 47-2-51.

(6) "Average final compensation" means the average annual earnable compensation of any employee during his or her last five years of creditable service or, if the employee has had less than five years of creditable service, his or her average annual earnable compensation during his or her total creditable service.

(7) "Beneficiary" means any person in receipt of a pension, an annuity, a retirement allowance, or other benefit under this chapter.

(8) "Board of trustees" means the board of trustees provided for in Code Section 47-2-21 to administer the retirement system.

(9) Reserved.

(10) Reserved.

(11) "Court of record" means state courts, city courts, superior courts, the Georgia Court of Appeals, and the Supreme Court of Georgia handling within their jurisdiction general state law exclusively. This definition shall have no effect on creditable service determined or prior service certificates issued by the board of trustees before February 13, 1956.

(12) "Credit" means creditable service, as defined in this Code section.

(13) "Creditable service" means prior service plus membership service and any other service recognized as creditable service under this chapter.

(14) "Division A" means the division within the retirement system of members who are part of the Employees' Social Security Coverage Group, as set forth in Code Section 47-2-71.

(15) "Earnable compensation" means the full rate of regular compensation payable to a member employee for his or her full normal working time, excluding any supplements from local funds. In cases where compensation includes maintenance, the board of trustees shall fix the value of that part of the compensation not paid in cash. Such term shall include contributions made to a qualified transportation plan, within the meaning of Section 132(f) of the federal Internal Revenue Code, and before tax or salary deferral contributions made under Section 125, 401(k), 402(g)(3), 457, or 414(h) of the federal Internal Revenue Code to this retirement system or to any other retirement plan maintained by an employer.

(16) "Employee" means:

(A) Any regularly classified worker, elected or appointed officer, or employee of a state agency or any employee of a county, city-county, or city board, which agency or board is subject to the state system of personnel administration created by Chapter 20 of Title 45 and the State Personnel Board, including a merit system for employees of the Department of Public Safety;

(B) Any employee or officer of any other department, bureau, board, institution, or commission of the state:

(i) Which department, bureau, board, or commission operates under a merit system of personnel administration;

(ii) Which department operates under a tenure system as established by law; or

(iii) Which department, bureau, board, or commission becomes eligible for inclusion in the retirement system by Act of the General Assembly

who receives payment for performance of personal services from the state or any department, bureau, institution, board, or commission of the state or from a county, city-county, or city board and who is employed in a position normally requiring actual performance of duty during not less than nine months of the year. "Employee" shall not include members of the Teachers Retirement System of Georgia, members of the Public School Employees Retirement System, any person on the payroll of a third party with whom an employer has contracted for the provision of such person's services, or any person classified by an employer as other than a common law employee for federal tax purposes, even if a court, tribunal, or administrative agency determines that such person is a common law employee and not an independent contractor for federal tax purposes; or

(C) Any other provisions of law to the contrary notwithstanding, any and all civilians who are employed in or with the Army National Guard of Georgia and the Air National Guard of Georgia shall, upon establishment of a merit system for such civilian employees and upon the approval of the adjutant general, be entitled to the retirement allowances, benefits, and privileges provided by this chapter, notwithstanding that such employees may be paid by federal funds. No credit shall accrue to such civilian employees for any service rendered prior to the effective date of coverage under the retirement system. The adjutant general is authorized to make such arrangements and agreements as may be necessary or proper in order to effect deductions from the salaries or wages of such civilian employees as may be necessary or proper in the administration of the retirement system as to such civilian employees. It is the intent of the General Assembly that such persons be included in this definition only if federal funds are available for payment of employer contributions for such employees and other expenses of participation.

(16.1) "Employee" may include new certified professional personnel employed on and after July 1, 1983, for the first time by the State Board of Education or by the State Department of Education only if such personnel elect membership in the retirement system pursuant to subsection (h) of Code Section 47-3-60. As used in this paragraph, the term "certified professional personnel" shall have the meaning provided for in paragraph (8.1) of Code Section 47-3-1.

(16.2) "Employee" shall not include certified professional personnel who are in the unclassified service as defined by Code Section

45-20-2 and who are employed by the State Board of Education or by the State Department of Education and who elect to become members of the Teachers Retirement System of Georgia pursuant to the authority of subsection (i) of Code Section 47-3-60. As used in this paragraph, the term "certified professional personnel" shall have the meaning provided for in paragraph (8.1) of Code Section 47-3-1.

(16.3) "Employee" may include persons employed on and after July 1, 1987, for the first time by the Technical College System of Georgia or by postsecondary vocational-technical schools governed by the Technical College System of Georgia only if such personnel elect membership in the retirement system pursuant to subsection (j) of Code Section 47-3-60.

(16.4) "Employee" shall not include persons who are employed by the Technical College System of Georgia or by a postsecondary vocational-technical school governed by the Technical College System of Georgia and who elect to become members of the Teachers Retirement System of Georgia pursuant to the authority of subsection (j) of Code Section 47-3-60.

(16.5) "Employee" shall not include personnel employed by the State Board of Education or by the State Department of Education who are authorized to elect and elect to become or remain members of the Teachers Retirement System of Georgia pursuant to applicable provisions of Chapter 3 of this title.

(16.6) "Employee" shall not include an individual classified by an employer as an independent contractor or a leased employee within the meaning of Section 414(n) of the federal Internal Revenue Code, even if such individual is later reclassified by the Internal Revenue Service as a common law employee.

(17) "Employer" means:

(A) The state or any department, bureau, institution, board, or commission of the state or any county, city-county, or city board, the employees of which are subject to the state system of personnel administration created by Chapter 20 of Title 45 and the State Personnel Board, including a merit system for employees of the Department of Public Safety, and all state departments under a tenure system as established by law, provided that such county, city-county, or city board may notify the board of trustees that it will not participate in the benefits of the retirement system, such notice to be given in writing on or before the commencement date or before persons are employed by it. Any employee of a county, city-county, or city board having an existing local retirement system may elect to continue to participate in such existing local system but shall not participate in two systems, and his or her

election shall be final on the commencement date under this chapter. Any county, city-county, or city employee who elects to become a member of this retirement system and who was a member of an existing local retirement system shall transfer to the board of trustees any equity he or she has in the local system;

(B) Any other provisions of law to the contrary notwithstanding, the adjutant general is authorized, though not directed, to establish a merit system and to perform all of the duties and obligations of an "employer" for all civilians employed in or with the Army National Guard of Georgia and the Air National Guard of Georgia, even though such employees may be paid with federal funds. The adjutant general is further authorized to make and enter into such agreements and take such actions as are necessary to provide for all contributions and payments specified in this chapter, from funds made available by the federal government, and otherwise to comply with this chapter so as to make this chapter applicable to such civilian employees; or

(C) Any new state agency described under Code Section 47-2-70.1 and any other entity authorized by law to report any of its employees as members of this system.

(18) "Expense fund" means the fund set forth under Code Section 47-2-60.

(19) "Group term life insurance" means the survivors benefits established under Code Section 47-2-128.

(20) "Involuntary separation from employment without prejudice" means separation or release from service other than by the willing choice of a member, provided that such member has not been convicted in a court of competent jurisdiction of any crime involving moral turpitude or malfeasance in office or has not been forced to make restitution for any funds or property wrongfully taken by the member. Involuntary separation shall not include the defeat in an election of an elected official who becomes a member of this retirement system for the first time on or after July 1, 1971.

(21) "Involuntary separation from employment with prejudice" means separation or release from service other than by the willing choice of a member who has been convicted in a court of competent jurisdiction of a crime involving moral turpitude or malfeasance in office or who has been forced to make restitution for any funds or property wrongfully taken by the member.

(22) "Medical board" means the board of physicians established under Code Section 47-2-24 for the purpose of arranging for and passing upon medical examinations required under this chapter.

(23) "Member" means any employee included in the membership of this retirement system. On and after July 1, 1967, no employee shall become a member unless his or her position with an employer, as defined in paragraph (17) of this Code section, is his or her primary occupation and such position requires that the employee spend at least the number of hours specified in regulations adopted by the board of trustees in the actual performance of his or her duties, provided that in no case shall the number of hours be less than 30 hours per week during at least nine months of a year.

(24) "Membership service" means service which is rendered by an employee while he or she is a member of the retirement system and for which credit is allowable under this chapter.

(25) "Option one," "option two," "option three," and "option four" mean the optional forms in which a member may elect to receive his or her retirement allowance, which options are set forth in Code Section 47-2-121.

(26) "Pension" means periodic payments for life derived from contributions of the state.

(27) "Pension accumulation fund" means the fund set forth in Code Section 47-2-55.

(28) "Pension reserve" means the present value of all payments to be made on account of a pension, or benefit in lieu of a pension, computed at regular interest upon the basis of the mortality tables last adopted by the board of trustees.

(28.1) "Plan year" means the 12 month period beginning on July 1 of each year.

(29) "Prior service" means service rendered prior to January 1, 1954, for which credit is allowable under this chapter.

(30) "Prior service certificate" means the certificate issued to a member under this chapter as proof of his or her prior service.

(31) "Regular interest" means interest at such a rate as shall be determined by the board of trustees in accordance with Code Section 47-2-26, which interest shall be compounded annually.

(32) "Retirement" means withdrawal from service with a retirement allowance granted under this chapter.

(33) "Retirement allowance" means the sum of the annuity and the pension, or any optional benefit payable in lieu thereof. All retirement allowances shall be payable in equal monthly installments, except that the board of trustees may adopt regulations providing for the payment of a lump sum, not to exceed the equivalent actuarial value

of the retirement allowance, in lieu of a retirement allowance of less than \$10.00 per month or in lieu of part of an annuity.

(34) "Retirement system" means the Employees' Retirement System of Georgia.

(35) "Service" means service rendered as an employee and paid for by an employer.

(36) "Service credit" means creditable service, as defined in this Code section.

(37) "Within one year after discharge from the armed forces" means within one year after the termination of the member's active service in the military or naval forces of the United States and shall not include any military reserve or naval reserve service. (Ga. L. 1949, p. 138, § 1; Ga. L. 1950, p. 416, § 1; Ga. L. 1951, p. 394, § 1; Ga. L. 1953, Jan.-Feb. Sess., p. 349, § 1; Ga. L. 1953, Nov.-Dec. Sess., p. 160, § 1; Ga. L. 1956, p. 54, § 1; Ga. L. 1961, p. 101, §§ 1, 2; Ga. L. 1961, p. 143, § 1; Ga. L. 1967, p. 751, § 1; Ga. L. 1968, p. 195, § 1; Ga. L. 1971, p. 96, § 1; Ga. L. 1980, p. 925, § 1; Ga. L. 1982, p. 3, § 47; Ga. L. 1983, p. 1859, § 1; Ga. L. 1984, p. 1296, § 1; Ga. L. 1985, p. 209, § 1; Ga. L. 1986, p. 1543, § 1; Ga. L. 1987, p. 575, §§ 5, 6; Ga. L. 1988, p. 1351, § 1; Ga. L. 1988, p. 1742, § 1; Ga. L. 1989, p. 52, § 1; Ga. L. 2005, p. 535, §§ 3, 4/HB 460; Ga. L. 2006, p. 93, § 1/SB 466; Ga. L. 2008, p. 562, § 1/SB 434; Ga. L. 2009, p. 752, § 1/SB 98; Ga. L. 2009, p. 947, §§ 9-12/HB 202; Ga. L. 2010, p. 1207, §§ 3, 64/SB 436; Ga. L. 2012, p. 413, § 2/HB 805.)

**The 2012 amendment**, effective July 1, 2012, inserted "or her" throughout this Code section; substituted "the employee" for "he" in paragraph (6); substituted "subject to the state system of personnel administration created by Chapter 20 of Title 45 and the State Personnel Board" for "under the State Personnel Administration" in subparagraph (16)(A); added "or" at the end of the undesignated language following division (16)(B)(iii); substituted "as defined by Code Section 45-20-2" for "of the State Personnel Administration" in the first sentence of paragraph (16.2); in subparagraph (17)(A), substituted "subject to the state system of personnel administration created by Chapter 20 of Title 45 and the State Personnel Board" for "under the State Personnel Administration" in the first sentence and substituted a semicolon for a period at the end of the last sentence; substituted ";" or" for a period at the end of

subparagraph (17)(B); substituted "Any" for "Employer" shall include any" in subparagraph (17)(C); and inserted "or she" in paragraph (24).

**Editor's notes.** — Ga. L. 2012, p. 413, § 1/HB 805, not codified by the General Assembly, provides that: "The purpose of this Act is to make conforming amendments and correct references in Title 47 of the Official Code of Georgia Annotated, relating to retirement and pensions, relative to the abolition of the State Personnel Administration and the transfer of certain functions of such agency to the Department of Administrative Services as provided by a separate Act." The separate Act referred to is Ga. L. 2012, p. 446/HB 642, which became effective July 1, 2012, and which provides for the abolition of the State Personnel Administration and the transfer of functions.

Ga. L. 2012, p. 413, § 13/HB 805, not codified by the General Assembly, pro-

vides that: "This Act shall become effective on July 1, 2012, only if an Act abolishing the State Personnel Administration and providing for the transfer of certain functions of such agency to the Department of Administrative Services is enacted and becomes effective on that

same date; otherwise, this Act shall not become effective and shall stand repealed on July 1, 2012." Ga. L. 2012, p. 446/HB 642, effective July 1, 2012, provides for the abolition of the State Personnel Administration and the transfer of functions.

## **JUDICIAL DECISIONS**

**Cited** in *Silliman v. Cassell*, 292 Ga. 464, 738 S.E.2d 606 (2013).

### **47-2-2. Involuntary separation from employment; grounds and procedures for discharge of employees.**

(a) The provisions of this Code section are supplemental to, and not in lieu of, the provisions of paragraphs (20) and (21) of Code Section 47-2-1 defining "involuntary separation from employment without prejudice" and "involuntary separation from employment with prejudice."

(b) The word "employee" as defined in paragraph (2) of subsection (c) of this Code section shall include any such employee in the classified or unclassified service of the state system of personnel administration provided for by Chapter 20 of Title 45. The provisions of that law or any rules or regulations promulgated pursuant thereto relative to the dismissal of employees from employment shall not be applicable to the discharge of an employee from employment pursuant to the provisions of this Code section. Any such employee who is otherwise subject to that law and rules or regulations promulgated pursuant thereto shall continue to be subject thereto for the purpose of any adverse personnel action other than discharge from employment or suspension pursuant to this Code section, but for the purposes of such discharge from employment or suspension, the provisions of this Code section shall be exclusive.

(c) As used in this Code section, the term:

(1) "Duties" means duties and responsibilities assigned by an employer to an employee which are reasonably related to the lawful objectives and responsibilities of the employer and which are reasonably related to the position of employment held by the employee for which the employee is compensated.

(2) "Employee" means an employee, other than an elected public official, a public official selected by a vote of a board to serve at the pleasure of the board, or a public official appointed pursuant to law for a specific term of office, as defined in paragraph (16) of Code Section 47-2-1 who was a member of the retirement system prior to

April 1, 1972, and who, if involuntarily separated from employment without prejudice, has sufficient membership service under the retirement system to qualify for a retirement allowance because of such involuntary separation from employment.

(3) "Employer" means any person or group of persons authorized by law or having authority delegated by law to discharge an employee.

(4) "Insubordination" means the refusal by an employee to carry out the employee's duties when instructed to do so by the employer or by the employee's supervisor upon the instructions or under the authority of the employer.

(5) "Irresponsible performance of duties" means the performance of any duties by an employee or the use of an employee's position of employment for any one or more of the following purposes:

(A) To make a financial gain or receive materials or services having financial value, except compensation received as an employee, under circumstances which would lead a reasonable person to believe that the financial gain or the receipt of materials or services was improperly related to the performance of duties by the employee;

(B) To purchase or authorize the purchase of materials or services from public funds when the employee knows or reasonably could be expected to know that the amount paid for such materials or services unreasonably exceeds the amount for which substantially equivalent materials or services could be purchased without excessive delay or inconvenience;

(C) To use publicly owned real or personal property or publicly supplied services for personal use when the employee knows or reasonably could be expected to know that such personal use of public property or services is unauthorized or improper; or

(D) To expend or authorize the expenditure of public funds in a manner which would lead a reasonable person to believe the employee shows a reckless disregard for the obligation to taxpayers to expend public funds in a prudent and efficient manner.

(6) "Malingering" means frequent absences from work or the failure to perform duties during working hours because of claims of illness which are unsubstantiated as determined pursuant to subsection (e) of this Code section.

(7) "Neglect of duty" means the repeated failure by an employee to carry out the employee's duties, either because of excessive unexcused absences from work or a failure to perform or the unsat-

isfactory performance of duties while at work or a combination thereof.

(8) "Proof of illness" means a written opinion by one or more physicians designated by the medical board provided for by Code Section 47-2-24 stating that an employee's absences from work or unsatisfactory performance of duties are reasonably related to an illness suffered by the employee and describing the nature of such illness.

(9) "Unsatisfactory performance of duties in a willful manner" means the unsatisfactory performance of duties by an employee when the past satisfactory performance of duties by the employee indicates the employee's unsatisfactory performance is willful as determined pursuant to subsection (f) of this Code section.

(d) An employee may be discharged from employment pursuant to the requirements of this Code section for insubordination, irresponsible performance of duties, malingering, neglect of duty, or unsatisfactory performance of duties in a willful manner or for any combination of such reasons. Any employee so discharged from employment shall not be entitled to and shall not receive a retirement benefit based on involuntary separation from employment without prejudice pursuant to Code Section 47-2-123.

(e) An employer shall have a reasonable basis for believing an employee is malingering when:

(1) The employee has a pattern of absences from work because of illness or unsatisfactory performance of duties because of illness or a pattern of absences from work and unsatisfactory performance of duties because of illness;

(2) The employer has requested the employee, in writing, to provide proof of illness and the employee has been given a reasonable opportunity, which shall not be less than 30 days after the date of the request made by the employer, to respond to the employer's request; and

(3) The employee has provided no or unsatisfactory proof of illness to the employer in response to the request made pursuant to paragraph (2) of this subsection.

(f) An employer shall have a reasonable basis for believing an employee is engaging in unsatisfactory performance of duties in a willful manner when:

(1) The past work history of the employee indicates the employee is capable of satisfactory performance of duties;

(2) The unsatisfactory performance of duties became increasingly apparent after the employee qualified for a retirement benefit based on involuntary separation from employment without prejudice; and

(3) The employee does not claim illness as a basis for unsatisfactory performance of duties and has offered no proof of illness to the employer.

(g) When an employer is considering the discharge from employment of an employee for any one or more reasons specified in subsection (d) of this Code section, the employer shall transmit a written notice to the employee containing the following:

(1) An explanation of the conduct or deficiencies of the employee which form the basis for the employer's considering the discharge of the employee;

(2) A statement that such conduct may result in the employee's discharge from employment on a specified date, which shall not be earlier than the tenth day following the date of the notice in the case of insubordination or irresponsible performance of duties and not earlier than the thirtieth day following the date of the notice if the basis for considering the discharge of the employee is for a reason or reasons other than insubordination or irresponsible performance of duties;

(3) A statement that the employee's discharge from employment for the reasons specified in the notice shall not constitute involuntary separation from employment without prejudice within the meaning of the applicable provisions of the Employees' Retirement System of Georgia and that if discharged, the employee shall not be entitled to receive and shall not receive a retirement benefit based on involuntary separation from employment without prejudice;

(4) A statement that the employee has a right to a hearing before the employer on a specified date, which shall be at least five days prior to the date specified for the employee's discharge from employment; and

(5) A statement that at the hearing before the employer, the employee shall be given an opportunity to offer explanations for the employee's conduct or deficiencies and to present evidence on the employee's behalf.

(h) An employee being considered for discharge from employment because of insubordination or irresponsible performance of duties may be suspended without pay, except to the extent the employee has accumulated annual leave, pending the completion of the procedures provided for in subsections (g) and (i) of this Code section. If the employer's final decision is not to discharge the employee or if the

employee's discharge is not upheld by the court upon judicial review provided for in Code Section 47-2-3, the compensation denied to the employee during suspension shall be reimbursed to the employee and, if applicable, accumulated leave used during the suspension shall be reinstated.

(i) If an employee subject to the provisions of subsection (g) of this Code section fails to respond to the notice sent to the employee pursuant to said subsection or if the employer is not satisfied with the explanation made by the employee for the conduct or deficiencies specified in said notice and is not satisfied with the evidence presented in the employee's behalf, the employee may be discharged from employment on the date specified in said notice or on such later date as shall be specified in writing by the employer to the employee. The employee shall be notified, in writing, of the final decision of the employer and such notice shall provide an explanation for the employer's decision.

(j) An employer discharging an employee pursuant to this Code section shall prepare a written report to the board of trustees on the discharge of the employee. Any notices or other written communications to the employee which relate to the employer's decision to discharge the employee shall be attached to and made a part of the employer's report to the board of trustees.

(k) It shall be the duty of any employer considering the discharge of an employee for any reason or combination of reasons specified in subsection (d) of this Code section to follow the procedures specified in this Code section as a condition precedent to the discharge of such employee. (Code 1981, § 47-2-2, enacted by Ga. L. 1984, p. 1296, § 2; Ga. L. 1985, p. 209, § 1; Ga. L. 1993, p. 86, § 1; Ga. L. 2009, p. 752, § 1/SB 98; Ga. L. 2012, p. 413, § 3/HB 805.)

**The 2012 amendment**, effective July 1, 2012, substituted "state system of personnel administration" for "State Personnel Administration" in the first sentence of subsection (b).

**Editor's notes.** — Ga. L. 2012, p. 413, § 1/HB 805, not codified by the General Assembly, provides that: "The purpose of this Act is to make conforming amendments and correct references in Title 47 of the Official Code of Georgia Annotated, relating to retirement and pensions, relative to the abolition of the State Personnel Administration and the transfer of certain functions of such agency to the Department of Administrative Services as provided by a separate Act." The separate Act

referred to is Ga. L. 2012, p. 446/HB 642, which became effective July 1, 2012, and which provides for the abolition of the State Personnel Administration and the transfer of functions.

Ga. L. 2012, p. 413, § 13/HB 805, not codified by the General Assembly, provides that: "This Act shall become effective on July 1, 2012, only if an Act abolishing the State Personnel Administration and providing for the transfer of certain functions of such agency to the Department of Administrative Services is enacted and becomes effective on that same date; otherwise, this Act shall not become effective and shall stand repealed on July 1, 2012." Ga. L. 2012, p. 446/HB

642, effective July 1, 2012, provides for the abolition of the State Personnel Administration and the transfer of functions.

## ARTICLE 2

### CREATION, ADMINISTRATION, AND MANAGEMENT OF THE ASSETS OF THE RETIREMENT SYSTEM

#### **47-2-21. Power and duty of board of trustees to administer and operate retirement system; membership of board; vacancies; expenses; oath; quorum.**

- (a) The administration and responsibility for the proper operation of the retirement system and for effectuating this chapter are vested in the board of trustees, which shall be organized immediately after a majority of the trustees have qualified and taken the oath of office.
- (b) The board of trustees shall consist of seven trustees as follows:
  - (1) The state auditor, ex officio;
  - (2) The state treasurer, ex officio;
  - (3) The commissioner of administrative services, ex officio;
  - (4) One member appointed by the Governor for a term of four years, provided that the first such term was from date of appointment to June 30, 1951;
  - (5) Two trustees elected by the trustees set forth in paragraphs (1) through (4) of this subsection for a term of four years, provided that in their first terms one served for a term from the date of election to June 30, 1950, and the other for a term from the date of election to June 30, 1952; provided, further, that each of these two members shall have had at least five years of creditable service with an agency included in this retirement system; and
  - (6) The seventh trustee shall be a citizen of this state but not a member of the retirement system nor shall he or she hold or be a candidate for public office during his or her term of office as a trustee. He or she shall have had at least ten years of experience in the investment of moneys and shall be elected by the remaining trustees for a term of four years, provided that his or her first term was from the date of election to June 30, 1953.
- (c) If a vacancy occurs in the office of a trustee, the vacancy shall be filled for the unexpired term in the same manner as the original appointment or election.
- (d) The trustees may receive the daily expense allowance authorized for members of the General Assembly for each day spent attending

meetings of the board of trustees and any committee meetings called pursuant to authorization of the board of trustees and for time spent in necessary travel. In addition to such amount, the trustees shall be reimbursed for all actual travel and other expenses necessarily incurred through service on the board of trustees. State officials serving ex officio shall not receive the daily expense allowance but shall be entitled to reimbursement of actual expenses.

(e) Each trustee shall, within ten days after his or her appointment or election, take an oath of office that he or she will diligently and honestly administer the affairs of the board of trustees which have been entrusted to him or her and that he or she will not knowingly violate or willingly permit to be violated any law applicable to the retirement system. The oath shall be subscribed to by the trustee, certified by the officer before whom it is taken, and filed immediately in the office of the Secretary of State.

(f) Five trustees at any meeting of the board of trustees shall constitute a quorum to transact business. Each trustee shall be entitled to one vote and four votes shall be necessary for a decision by the board of trustees. (Ga. L. 1949, p. 138, § 6; Ga. L. 1951, p. 394, § 9; Ga. L. 1982, p. 3, § 47; Ga. L. 1991, p. 274, § 1; Ga. L. 1993, p. 1402, § 18; Ga. L. 1993, p. 1690, § 2; Ga. L. 2010, p. 863, § 3/SB 296; Ga. L. 2012, p. 413, § 4/HB 805.)

**The 2012 amendment**, effective July 1, 2012, substituted “commissioner of administrative services” for “commissioner of personnel administration” in paragraph (b)(3); and inserted “or she” and “or her” throughout paragraph (b)(6) and subsection (e).

**Editor's notes.** — Ga. L. 2012, p. 413, § 1/HB 805, not codified by the General Assembly, provides that: “The purpose of this Act is to make conforming amendments and correct references in Title 47 of the Official Code of Georgia Annotated, relating to retirement and pensions, relative to the abolition of the State Personnel Administration and the transfer of certain functions of such agency to the Department of Administrative Services as provided by a separate Act.” The separate Act referred to is Ga. L. 2012, p. 446/HB 642,

which became effective July 1, 2012, and which provides for the abolition of the State Personnel Administration and the transfer of functions.

Ga. L. 2012, p. 413, § 13/HB 805, not codified by the General Assembly, provides that: “This Act shall become effective on July 1, 2012, only if an Act abolishing the State Personnel Administration and providing for the transfer of certain functions of such agency to the Department of Administrative Services is enacted and becomes effective on that same date; otherwise, this Act shall not become effective and shall stand repealed on July 1, 2012.” Ga. L. 2012, p. 446/HB 642, effective July 1, 2012, provides for the abolition of the State Personnel Administration and the transfer of functions.

**47-2-22. Election of chairperson and director; actuarial services; application of state system of personnel administration; payment of costs of personnel administration.**

(a) The board of trustees shall elect a chairperson from its membership and shall employ a director who shall not be a trustee.

(b) The board of trustees shall engage such actuarial and other services as shall be required to transact the business of the retirement system.

(c) The director and all other employees of the board of trustees shall be governed by such rules of position, classification, appointment, promotion, demotion, dismissal, transfer, qualification, compensation, seniority, privileges, tenure, and other employment standards as may now or hereafter be established under the state system of personnel administration provided for by Chapter 20 of Title 45, including the rules and regulations promulgated by the State Personnel Board.

(d) The board of trustees shall pay its share of the administrative costs of operating the state system of personnel administration in the manner prescribed in Code Section 45-20-4. (Ga. L. 1949, p. 138, § 6; Ga. L. 2009, p. 752, § 1/SB 98; Ga. L. 2012, p. 413, § 5/HB 805.)

**The 2012 amendment**, effective July 1, 2012, substituted “chairperson” for “chairman” in subsection (a); substituted “state system of personnel administration provided for by Chapter 20 of Title 45, including the rules and regulations promulgated by the State Personnel Board” for “State Personnel Administration” in subsection (c); and substituted the present provisions of subsection (d) for the former provisions, which read: “The board of trustees shall pay its pro rata share of the administrative costs of operating the State Personnel Administration in the manner prescribed in paragraph (6) of subsection (b) of Code Section 45-20-4.”

**Editor’s notes.** — Ga. L. 2012, p. 413, § 1/HB 805, not codified by the General Assembly, provides that: “The purpose of this Act is to make conforming amendments and correct references in Title 47 of the Official Code of Georgia Annotated, relating to retirement and pensions, relative to the abolition of the State Personnel

Administration and the transfer of certain functions of such agency to the Department of Administrative Services as provided by a separate Act.” The separate Act referred to is Ga. L. 2012, p. 446/HB 642, which became effective July 1, 2012, and which provides for the abolition of the State Personnel Administration and the transfer of functions.

Ga. L. 2012, p. 413, § 13/HB 805, not codified by the General Assembly, provides that: “This Act shall become effective on July 1, 2012, only if an Act abolishing the State Personnel Administration and providing for the transfer of certain functions of such agency to the Department of Administrative Services is enacted and becomes effective on that same date; otherwise, this Act shall not become effective and shall stand repealed on July 1, 2012.” Ga. L. 2012, p. 446/HB 642, effective July 1, 2012, provides for the abolition of the State Personnel Administration and the transfer of functions.

**ARTICLE 5**

**SERVICE CREDITABLE TOWARD RETIREMENT BENEFITS**

**47-2-91. Credit for accumulations of forfeited annual and sick leave.**

(a) As used in this Code section, the term:

(1) "Classified member" means a member of the retirement system who is in the classified service as defined in Code Section 45-20-2.

(2) "Commissioner" means the commissioner of administrative services provided for by Code Section 50-5-1.

(3) "Compensatory time" means time off from work which is used in lieu of annual or sick leave to offset overtime service rendered by an employee when the employee is compensated by a fixed salary and is not financially compensated for such overtime service.

(4) "Elected state official" means the Governor, Lieutenant Governor, each member of the Public Service Commission, the Secretary of State, Attorney General, State School Superintendent, Commissioner of Insurance, Commissioner of Labor, Commissioner of Agriculture, each Justice of the Supreme Court, and each Judge of the Court of Appeals.

(5) "Unclassified member" means any member of the retirement system who is in the unclassified service as defined in Code Section 45-20-2 or who is otherwise not covered by the rules and regulations of the State Personnel Board, including elected state officials.

(b)(1) Accumulated days of forfeited annual and sick leave for which a member has not been paid shall constitute creditable service if such member has at least six months of such forfeited leave at the time of the member's retirement. The member shall be given one month of creditable service for each 20 days of forfeited annual and sick leave. Upon retirement of a classified member, the employer shall certify to the board of trustees the total amount of that member's forfeited annual and sick leave based on leave records for periods of service where employers have maintained adequate leave records. For periods of service where no leave records are available for classified members, forfeited leave for an undocumented period may be computed as provided in subsection (i) of this Code section. The determination of accumulated days of forfeited annual and sick leave for unclassified members shall be based on leave records for periods of service where employers have maintained adequate leave records. For periods of service where no leave records are available, forfeited leave for unclassified employees shall be computed as follows:

(A) When 15 years or more of leave records are available for an unclassified member, the determination of forfeited leave for undocumented periods shall be computed as provided in subsection (i) of this Code section; or

(B) When less than 15 years of leave records are available for an unclassified member, the determination of forfeited leave for undocumented periods shall be based on the one-year average amount of forfeited annual and sick leave calculated by the commissioner pursuant to subsection (f) of this Code section and as provided in subsection (g) of this Code section, subject to the limitation in subsection (j) of this Code section.

(2) For both classified and unclassified members, each employer shall contribute the same amount as would have been contributed by the employer had the member obtaining creditable service for forfeited annual and sick leave remained in state employment without change in compensation for a period of time equal to the amount of forfeited annual and sick leave for which creditable service is obtained.

(c) For unclassified members, the maximum number of days of annual and sick leave which may be accumulated in one year shall be in accordance with the rules and regulations of the State Personnel Board governing employees in classified service, as defined in Code Section 45-20-2.

(d) For the purposes of this Code section, compensatory time shall not be applicable to elected state officials and no elected state official may offset any annual or sick leave taken by any such official by any compensatory time which might otherwise be applicable to such official.

(e) When accumulated forfeited annual and sick leave is claimed for the purposes of this Code section by an elected state official based on records maintained by or pursuant to the order or supervision of the elected state official, any such accumulated annual and sick leave accepted by the board of trustees shall, in addition to such records, be based on the elected state official's sworn statement that the amount of accumulated forfeited annual and sick leave claimed by the elected state official is true and correct.

(f) The commissioner shall select a random representative sample of employees who, as of June 30, 1985, have ten years or more of continuous service in the classified service as defined by Code Section 45-20-2. From an examination of the personnel records of the members in the sample, the commissioner shall calculate an annual average of the number of days of annual leave taken and an annual average of the number of days of sick leave taken by the members in the sample. The average days for annual leave taken and the average days for sick leave

taken shall then each be deducted, respectively, from the maximum number of days of annual leave and the maximum number of days of sick leave which may be accumulated in one year under rules and regulations of the State Personnel Board by an employee in the classified service as defined by Code Section 45-20-2. The two figures resulting after making such reductions shall be added together and the resulting figure shall be forfeited annual and sick leave for each year of membership service for the purposes of subsection (g) of this Code section, subject to the limitation in subsection (j) of this Code section.

(g) The average amount of forfeited annual and sick leave calculated by the commissioner pursuant to subsection (f) of this Code section shall be supplied by that officer to all employers. When less than 15 years of leave records are available, the determination of forfeited annual and sick leave for unclassified employees with undocumented periods may be certified by the employer based on the average amount of forfeited annual and sick leave supplied by the commissioner. The amount which may be so certified shall be calculated by multiplying the figure representing the one-year average of forfeited annual and sick leave by the number of years of membership service for which leave records were not available at the time of retirement, subject to the limitation in subsection (j) of this Code section.

(h) For any member whose membership service includes service as both a classified and unclassified member, both classified and unclassified service may be considered in qualifying for undocumented forfeited annual and sick leave calculations based on 15 or more years where employers have maintained adequate records of annual and sick leave taken by members. When 15 or more years of leave records are available through a combination of both classified and unclassified service, forfeited annual and sick leave for an undocumented period may be computed as provided in subsection (i) of this Code section. When less than 15 years of leave records are available through a combination of both classified and unclassified service for a member, then the undocumented forfeited leave for the unclassified service shall be calculated pursuant to subsection (g) of this Code section and undocumented forfeited leave for classified service shall be calculated pursuant to subsection (i) of this Code section, subject to the limitation in subsection (j) of this Code section. The two calculations shall then be added together to determine the total amount of forfeited leave for the undocumented period.

(i) The formula provided by this subsection may be utilized for computation of forfeited annual and sick leave during the undocumented periods of service described in paragraph (1) of subsection (b) and subparagraph (b)(1)(A) of this Code section. The formula is as follows:

- (1) Compute the maximum earnable sick and annual leave for the undocumented period;
- (2) Compute the total sick and annual leave taken for all periods in which documentation is available;
- (3) Compute the average sick and annual leave taken per month by dividing the answer under paragraph (2) of this subsection by the total number of documented months;
- (4) Multiply the answer under paragraph (3) of this subsection by the total number of months in the undocumented period; and
- (5) Subtract the answer under paragraph (4) of this subsection from the answer under paragraph (1) of this subsection to determine total leave earned and not taken during the undocumented period.

(j) For unclassified employees who have less than 15 years of leave records available, the determination of forfeited annual and sick leave shall be limited to the lesser of the amount calculated pursuant to subsections (f) and (g) of this Code section or the average of actual forfeited annual and sick leave for which leave records are available, whichever is less.

(k) The board of trustees may adopt rules and regulations, not inconsistent with the provisions of this Code section, to aid in administering and carrying out the provisions of this Code section. (Ga. L. 1974, p. 1451, § 1; Ga. L. 1976, p. 393, § 1; Ga. L. 1979, p. 1022, § 1; Ga. L. 1985, p. 1624, § 2; Ga. L. 1993, p. 86, § 1; Ga. L. 2009, p. 752, § 1/SB 98; Ga. L. 2010, p. 1207, § 64/SB 436; Ga. L. 2012, p. 413, § 6/HB 805.)

**The 2012 amendment**, effective July 1, 2012, substituted “as defined in Code Section 45-20-2” for “of the State Personnel Administration provided for by Chapter 20 of Title 45” in paragraphs (a)(1) and (a)(5); substituted “administrative services provided for by Code Section 50-5-1” for “personnel administration provided for in Code Section 45-20-4” in paragraph (a)(2); deleted “paragraph (2) of” following “defined in” in subsection (c); and substituted “as defined by Code Section 45-20-2” for “of the State Personnel Administration” in the first and third sentences of subsection (f).

**Editor's notes.** — Ga. L. 2012, p. 413, § 1/HB 805, not codified by the General Assembly, provides that: “The purpose of this Act is to make conforming amendments and correct references in Title 47 of the Official Code of Georgia Annotated,

relating to retirement and pensions, relative to the abolition of the State Personnel Administration and the transfer of certain functions of such agency to the Department of Administrative Services as provided by a separate Act.” The separate Act referred to is Ga. L. 2012, p. 446/HB 642, which became effective July 1, 2012, and which provides for the abolition of the State Personnel Administration and the transfer of functions.

Ga. L. 2012, p. 413, § 13/HB 805, not codified by the General Assembly, provides that: “This Act shall become effective on July 1, 2012, only if an Act abolishing the State Personnel Administration and providing for the transfer of certain functions of such agency to the Department of Administrative Services is enacted and becomes effective on that same date; otherwise, this Act shall not

become effective and shall stand repealed on July 1, 2012." Ga. L. 2012, p. 446/HB 642, effective July 1, 2012, provides for

the abolition of the State Personnel Administration and the transfer of functions.

## ARTICLE 7

### RETIREMENT ALLOWANCES, DISABILITY BENEFITS, SPOUSES' BENEFITS

#### **47-2-123. Allowance payable upon death, disability, or involuntary separation from employment; restrictions on separation for disability; restrictions on entitlement to involuntary separation benefits.**

(a) Upon the death or involuntary separation from employment without prejudice of any member in service, he or she shall be entitled to an allowance in accordance with subsection (c) of this Code section, provided that the provisions of this subsection that relate to "upon becoming involuntarily separated from employment without prejudice" shall not be applicable to any person who first becomes a member after March 31, 1972.

(b)(1) Subject to the provisions of paragraphs (2) through (5) of this subsection, any member in service who has at least 15 years of creditable service may be retired on a disability allowance by the board of trustees, upon written application to the board of trustees by the member or his or her employer and upon certification by the medical board that he or she is medically or physically incapable of further performance of his or her duties in the position he or she held at the time his or her disability originated, that incapacity is likely to be permanent, and that he or she should be retired; provided, however, that the medical board shall not consider any evidence of such disability which is not submitted within 12 months after the date the member submits his or her first application for a disability retirement. The board of trustees may retire such member not less than 30 days nor more than 90 days after execution and filing of the written application.

(2) A member making application for a disability retirement pursuant to paragraph (1) of this subsection shall at the same time submit a copy of such application together with any supporting documentation accompanying such application to his or her employing agency. The member shall thereafter provide the employing agency with any additional information or documentation which he or she submits to the board of trustees in conjunction with such application.

(3) After receipt of the notice provided for in paragraph (2) of this subsection, the head of the member's agency or his or her designee

shall conduct an interview with the member applying for disability retirement; provided, however, that any designee of the head of an agency shall be an official at such agency who is above the level of the applicant's immediate supervisor and who has the authority to make job assignment decisions. The interview shall be held within ten business days after receipt of such notice. Based on the interview and information received by the agency pursuant to paragraph (2) of this subsection, the agency head or his or her designee shall determine if an alternative position is available for the member which meets the following requirements:

- (A) The physical requirements for such position are compatible with the member's physical limitations;
- (B) The annual compensation and possibility for future advancement for such position shall be the same as or greater than that of the current position of the member;
- (C) The duties for such position shall be reasonably compatible with the experience and educational qualifications of the member;
- (D) The position shall be one which includes the holder thereof as a member of the retirement system provided for by this chapter; and
- (E) The position must be available for acceptance by the member and an offer of the position to the official or member must be made, in writing, by not later than 45 days after the member submitted his or her application for a disability retirement.

An agency making an offer of alternative employment as provided in this paragraph shall so notify the board of trustees within 45 days after the member submitted his or her application for a disability retirement. After receipt of such notice, the board of trustees shall not approve a disability retirement until the procedures of paragraph (4) of this subsection are resolved.

(4) Any member applying for a disability retirement who is offered a position of employment in conformity with the requirements of paragraph (3) of this subsection shall accept the offer or dispute his or her ability to perform the tasks required by the position offered by submitting a written appeal to the agency and to the board of trustees within 30 days after receiving the offer. In the event of an appeal, the agency shall promptly submit to the medical board a detailed description of the requirements of the position offered and the medical board shall determine, based upon all information available to it, whether the member is reasonably capable of performing such tasks. The decision of the medical board shall be final. If the medical board determines that the member is unable to perform the tasks

required either by the position held at the time of the application for a disability retirement or the position offered, the member shall be placed on disability retirement immediately.

(5) A member who refuses to accept a position offered or file an appeal in a timely manner or who refuses to accept a position which the medical board has determined on appeal that he or she is capable of performing shall not be eligible to receive a disability retirement under this subsection.

(c)(1) The provisions of this paragraph shall apply only to persons who are members of the retirement system on June 30, 2007. Any member who is at least 60 years of age upon disability retirement, involuntary separation from employment without prejudice, or death shall receive the equivalent of a service retirement allowance. Any such member who is under 60 years of age shall receive, as appropriate, a disability allowance, allowance in case of involuntary separation from employment without prejudice, or death allowance, which shall consist of:

(A) In the case of a member with at least 15 years of service, 75 percent of the service retirement allowance which would have been payable upon service retirement at age 60 had the member continued in service to age 60 without further change in compensation, provided that this subparagraph shall not apply to a member whose employment was terminated by involuntary separation without prejudice;

(B) In the case of a member with at least 20 years of service, the service retirement allowance which would have been payable upon service retirement at age 60 had the member continued in service to age 60 without further change in compensation;

(C) In the case of a member with at least 25 years of service, 75 percent of the service retirement allowance which would have been payable upon service retirement at age 65 had he or she continued in service without further change in compensation; or

(D) In the case of a member with at least 30 years of service, the service retirement allowance which would have been payable upon service retirement at age 65 had he or she continued in service without further change in compensation.

Any provisions of this chapter to the contrary notwithstanding, in the application of subparagraphs (A), (B), (C), and (D) of this paragraph relating to allowances other than for disability or death, projected retirement allowance computations shall be made on the basis of the member's highest total monthly earnable compensation, as reflected by monthly contributions made during the last 24 calendar months in

which he or she had made contributions, except that no salary increase by adjustment in compensation in any manner in excess of 10 percent during the last 12 months of membership service shall be included in the projected computation.

(2) The provisions of this paragraph shall apply only to persons who first or again become members of the retirement system on or after July 1, 2007. Any member who has at least 15 years of creditable service and who becomes disabled before becoming eligible for a service retirement as provided in subsection (a) of Code Section 47-2-110 shall be eligible to retire forthwith without regard to age and to receive a disability retirement allowance calculated upon the number of years of creditable service attained to the date of retirement and based upon his or her highest average monthly compensation during a period of 24 consecutive calendar months while a member of the retirement system. No member who is eligible for an equivalent service retirement shall be eligible to apply for a disability retirement allowance.

(3) In lieu of a death benefit as provided in paragraph (1) of this subsection, a member who first or again becomes a member of the retirement system on or after July 1, 2007, and who has at least ten years of creditable service and is at least 60 years of age or who is less than 60 years of age and has at least 15 years of creditable service shall upon death receive the equivalent of a service retirement allowance calculated upon the number of years of creditable service attained on the date of death and based upon his or her highest average monthly compensation during a period of 24 consecutive calendar months while a member of the retirement system.

(d) In the application of subsection (c) of this Code section to death allowances, computations of projected retirement allowances shall be made on the same basis as though option two had been in effect. In lieu of the amount of death allowance otherwise payable to the beneficiary under option two, the member, upon written request, may at any time elect a reduced level death allowance of equivalent actuarial value, which allowance is payable to the beneficiary during a period of years certain or to the estate of the beneficiary and during the lifetime of such named beneficiary thereafter. At the election of the member, in case of death of the beneficiary during a term of years certain, the balance of the years certain payments may be paid to the estate of the member; but if such beneficiary predeceases the member, the total amount of the member's contributions to the date of his or her death shall be payable to the member's estate. The method of determining the equivalent actuarial value shall be consistent with the actuarial method of determining the beneficiary's death allowance under option two.

(e) Anything in this chapter to the contrary notwithstanding, on and after March 6, 1963, a member who has not accumulated sufficient

creditable service to qualify himself or herself for an allowance in case of involuntary separation from employment without prejudice shall not be deemed eligible for such allowances until he or she has accumulated sufficient membership service in a position classified under a merit system provided for by law or in a position covered under the retirement system. This subsection shall not affect the vesting of rights under Code Section 47-2-122. This subsection shall not be retroactive in any manner and shall not apply in any way to any person who was a member on or before February 13, 1962.

(f) The age and service requirements for a service retirement allowance shall not apply to allowances available under this Code section.

(g) From and after January 1, 1985, no employing unit within the government of the State of Georgia, including every department, commission, board, bureau, agency, branch of government, or any other employing unit by whatever name called, which has the authority and power to appoint, employ, release, separate, or fail to reappoint public officials or employees shall release or separate from state service, or fail to reappoint to continued state service, any public official or employee who is entitled to coverage under the involuntary separation retirement benefits provisions of this Code section. A release, separation, or failure to reappoint in violation of the provisions of this subsection shall be illegal, unlawful, and void. However, such releases or separations from state service or failures to reappoint to continued state service shall not be subject to the provisions of this subsection if such releases or separations from service or failures to reappoint occur under any of the following circumstances:

(1) Separation or release from service of an official or employee pursuant to Code Section 47-2-2 or separation or release from service of an official or the failure to reappoint an official by a board when such official serves at the pleasure of the board;

(2) Separation or release from service of an official or employee for any reason which would constitute cause as defined in the rules and regulations of the State Personnel Board if such separation or release from service is not pursuant to Code Section 47-2-2;

(3) Separation or release from service of an official or employee for criminal conduct under the laws of this state, any other state, or the United States; or

(4) A "discretionary termination" which means any one of the following:

(A) Separation or release from service of an official or employee under circumstances in which an official or employee is released or separated or any official's or employee's position or job is abolished

through a valid reduction-in-force plan approved by the Department of Administrative Services;

(B) Separation or release from service of any official or employee by reason of a bona fide reorganization of any employing unit, with respect to which reorganization any such separations or releases have been approved in advance by the Governor; or

(C) Separation or release from service of an official or employee, or failure of reappointment of an official or employee, who holds a confidential position to an appointed or elected public official, or a group of appointed or elected public officials, incurred as a result of a change of administration in the office of such appointed or elected public official, or group of appointed or elected public officials.

(h)(1) Except where termination is required by a sudden and unexpected loss of federal or state funds, an employer intending the discretionary termination of an official or employee shall notify the commissioner of administrative services at least 60 but not more than 120 days prior to the effective date of the discretionary termination of such official or employee. If termination is required by a sudden and unexpected loss of federal or state funds, the employer shall notify the commissioner of administrative services as soon as the employer becomes aware of the loss of funds and the termination shall be delayed until the completion of the procedures required by this subsection. Pending the completion of such procedures, the employee or official proposed for termination because of a sudden and unexpected loss of federal or state funds shall be compensated from any funds appropriated or available to the employer which may be used for such purpose. The notice shall be in writing and a copy thereof shall be forwarded to the board of trustees at the same time it is forwarded to the commissioner of administrative services. The notice shall include the following information:

(A) The name and current annual compensation of the official or employee proposed for discretionary termination;

(B) The age, length of service, current job description, and summary of the work experience of the official or employee proposed for discretionary termination;

(C) The educational qualifications of the official or employee proposed for discretionary termination; and

(D) An explanation of the reasons for the proposed discretionary termination of the official or employee.

(2) After receipt of the notice provided for in paragraph (1) of this subsection, the commissioner of administrative services shall schedule an interview with the official or employee proposed for discretion-

ary termination. The interview shall be held within 15 days after receipt of the notice. Based on the interview with the official or employee proposed for discretionary termination and the information provided by the notice received by the commissioner pursuant to paragraph (1) of this subsection, the commissioner shall contact appropriate state departments, boards, bureaus, and other agencies of the state government for the purpose of seeking continued employment for the official or employee proposed for discretionary termination. Any position for continued employment of the official or employee proposed for discretionary termination which is obtained by the commissioner shall meet the following requirements:

- (A) The annual compensation for such position shall be the same or greater than the current annual compensation of the official or employee proposed for discretionary termination;
- (B) The duties for such position shall be reasonably compatible with the previous work experience and educational qualifications of the official or employee proposed for discretionary termination;
- (C) The position shall be one which includes the holder thereof as a member of the retirement system provided for by this chapter; and
- (D) The position must be available for acceptance by the official or employee proposed for discretionary termination at least one day prior to the effective date of such termination and an offer of the position to the official or employee must be made, in writing, by not later than the day immediately preceding the effective date of the discretionary termination.

(3) Any official or employee proposed for discretionary termination who is offered a position of continued employment in conformity with the requirements of paragraph (2) of this subsection shall be deemed to have resigned from service at his or her own choice upon the failure of such official or employee to accept the position of continued employment, and no such official or employee so resigning from service shall qualify for retirement benefits based upon involuntary separation from employment without prejudice as authorized by this Code section.

(4) If the commissioner of administrative services fails to obtain a position of continued employment in conformity with the requirements of paragraph (2) of this subsection for an official or employee proposed for discretionary termination, then, on the effective date of the discretionary termination, the official or employee may be considered involuntarily separated from employment without prejudice for the purposes of this Code section.

(5) The commissioner of administrative services shall notify the board of trustees in writing of the action taken by the commissioner

pursuant to this subsection and of any position of continued employment which is offered to and accepted or refused by an official or employee proposed for discretionary termination.

(6) It is the intention of this subsection to provide procedures to secure the continued employment of officials and employees who may become subject to discretionary termination, and the provisions of this subsection shall not be construed to create any right to continue in a position of employment when that right does not exist independently of this subsection. (Ga. L. 1949, p. 138, § 5; Ga. L. 1951, p. 394, § 6; Ga. L. 1952, p. 175, § 1; Ga. L. 1953, Jan.-Feb. Sess., p. 349, § 5; Ga. L. 1957, p. 283, §§ 5, 6; Ga. L. 1959, p. 107, § 4; Ga. L. 1962, p. 54, § 5; Ga. L. 1962, p. 152, § 1; Ga. L. 1963, p. 42, § 1; Ga. L. 1968, p. 1361, § 1; Ga. L. 1970, p. 26, § 2; Ga. L. 1971, p. 685, § 1; Ga. L. 1972, p. 360, § 3; Ga. L. 1984, p. 1296, § 3; Ga. L. 1985, p. 209, § 1; Ga. L. 1995, p. 333, § 1; Ga. L. 2006, p. 223, § 1/HB 379; Ga. L. 2007, p. 73, § 1/SB 162; Ga. L. 2009, p. 322, § 2/HB 476; Ga. L. 2009, p. 752, § 1/SB 98; Ga. L. 2010, p. 1207, § 64/SB 436; Ga. L. 2012, p. 413, § 7/HB 805.)

**The 2012 amendment**, effective July 1, 2012, substituted “commissioner of administrative services” for “commissioner of personnel administration” throughout this Code section; inserted “or she” in subsection (a) and in the first sentence of subsection (e); inserted “or her” in the third sentence of subsection (d); inserted “or herself” in the first sentence of subsection (e); substituted “Department of Administrative Services” for “State Personnel Administration” in subparagraph (g)(4)(A); and deleted “of personnel administration” following “commissioner” in the third and fourth sentences of paragraph (h)(2).

**Editor’s notes.** — Ga. L. 2012, p. 413, § 1/HB 805, not codified by the General Assembly, provides that: “The purpose of this Act is to make conforming amendments and correct references in Title 47 of the Official Code of Georgia Annotated, relating to retirement and pensions, relative to the abolition of the State Personnel

Administration and the transfer of certain functions of such agency to the Department of Administrative Services as provided by a separate Act.” The separate Act referred to is Ga. L. 2012, p. 446/HB 642, which became effective July 1, 2012, and which provides for the abolition of the State Personnel Administration and the transfer of functions.

Ga. L. 2012, p. 413, § 13/HB 805, not codified by the General Assembly, provides that: “This Act shall become effective on July 1, 2012, only if an Act abolishing the State Personnel Administration and providing for the transfer of certain functions of such agency to the Department of Administrative Services is enacted and becomes effective on that same date; otherwise, this Act shall not become effective and shall stand repealed on July 1, 2012.” Ga. L. 2012, p. 446/HB 642, effective July 1, 2012, provides for the abolition of the State Personnel Administration and the transfer of functions.

## **ARTICLE 8**

### **PROVISIONS APPLICABLE TO PARTICULAR GROUPS OF EMPLOYEES**

#### **PART 3**

##### **TEACHERS AND MEMBERS OF THE TEACHERS RETIREMENT SYSTEM OF GEORGIA**

#### **47-2-181. Transfer of service credits and accumulated contributions from the Teachers Retirement System of Georgia to this retirement system; transfer of funds.**

(a) Any other provisions of law to the contrary notwithstanding, any member, except a member subject to subsection (b) of this Code section, who was previously a member of the Teachers Retirement System of Georgia who has service credits with said teachers retirement system may have such service credits and accumulated contributions under said teachers retirement system transferred to the Employees' Retirement System of Georgia, provided that such transferred service credits shall not be used in determining the qualifications of a member for benefits other than vested rights or disability, death, or normal service retirement allowances. The Teachers Retirement System of Georgia shall pay an employer contribution together with regular interest thereon to the Employees' Retirement System of Georgia for each member establishing creditable service under this subsection. The amount of such employer contributions shall be 6 percent of the reported compensation of the member establishing creditable service during membership in the Teachers Retirement System of Georgia. Any member who elects to transfer such service credits shall so notify the board of trustees in writing.

(b) Pursuant to Code Section 47-3-81, any employee of an agency under the retirement system may transfer his or her service credit to the credit of his or her membership in the Teachers Retirement System of Georgia in the event that he or she enters service as a teacher, as defined in Code Section 47-3-1.

(c)(1) Any provision of this title to the contrary notwithstanding, any vested member of the Teachers Retirement System who becomes an employee of an employer may, at his or her option, elect to remain a member of the Teachers Retirement System of Georgia.

(2) If a person subject to this subsection elects to remain a member of the Teachers Retirement System of Georgia, the employer and employee shall make all contributions to such retirement system and perform such other acts as are required by law or regulation.

(3) If a person subject to this subsection does not elect to remain a member of the Teachers Retirement System of Georgia, he or she

shall become a member of this retirement system subject to all provisions of this chapter.

(4) This subsection shall be applicable to each person who was a member of this retirement system on January 1, 1997, and to all persons who become a member on or after such date. Any person subject to this subsection who became a member of the Teachers Retirement System of Georgia between January 1, 1997, and June 30, 1998, who elects to remain a member of this retirement system shall be governed by the provisions of subsection (a) of this Code section relating to the transfer of service credits and accumulated contributions. Any person eligible to make the election provided for in this subsection shall do so in writing to the board of trustees not later than September 30, 2000, or within 60 days after the person became an employee of an employer, whichever date is later. Once made, the election is irrevocable.

(5) The provisions of this subsection shall not become a part of the employment contract and shall be subject to subsequent legislation; provided, however, that no person who has made the election provided by this subsection shall be affected by any subsequent legislation.

(d)(1) At the time the membership of a person is transferred from the Teachers Retirement System of Georgia to this retirement system subject to Article 10 of this chapter, this retirement system shall receive the funds transferred from the Teachers Retirement System of Georgia pursuant to Code Section 47-3-81 and, as applicable, add the accrued benefit transferred from the Teachers Retirement System of Georgia to the accrued benefit or the balance of employee contributions and interest. The total benefits of any such member shall be subject to the rules of this retirement system.

(2) At the time the membership of a person subject to Article 10 of this chapter transfers to the Teachers Retirement System of Georgia, this retirement system shall:

(A) Calculate the accumulated benefit using the service and compensation at the time of the transfer;

(B) Calculate the present value of the accrued benefit using methods and assumptions adopted by the board of trustees; and

(C) Transfer to the Teachers Retirement System of Georgia the greater of the present value of the accumulated benefit or the balance of the employee contributions and interest.

(3) All service transferred pursuant to this subsection shall be calculated as credit in this retirement system for all purposes in this retirement system.

(4) This retirement system and the Teachers Retirement System of Georgia shall recalculate the accumulated benefit of any person transferred between such retirement systems from January 1, 2009, through June 30, 2012, according to the methods prescribed by this subsection. (Ga. L. 1962, p. 54, § 8; Ga. L. 1968, p. 1407, § 2; Ga. L. 1973, p. 900, § 10; Ga. L. 1982, p. 3, § 47; Ga. L. 1992, p. 1110, § 2; Ga. L. 1998, p. 775, § 1; Ga. L. 2000, p. 1273, § 1; Ga. L. 2012, p. 1051, § 1/SB 286.)

**The 2012 amendment**, effective July 1, 2012, added subsection (d).

## PART 9

### JUDGES AND OTHER COURT EMPLOYEES; CERTAIN COUNTY EMPLOYEES

## 47-2-292. Merit system of personnel administration for county revenue employees; membership in retirement system; contributions; credit for prior service.

(a) The offices of the tax commissioners, tax collectors, and tax receivers of the counties of this state are declared to be adjuncts of the Department of Revenue, such offices assisting in the returning and collecting of state taxes. All tax commissioners, tax collectors, and tax receivers and employees in their offices shall be subject to a merit system of personnel administration, as promulgated by each such office, under which all such officials and employees shall perform services on the basis of merit, fitness, and efficiency.

(a.1) Notwithstanding any other provision of this Code section, no person who first or again takes office or becomes employed on or after July 1, 2012, shall become a member of the retirement system pursuant to the provisions of this Code section. Any person serving in any such position on July 1, 2012, who continues in service without a break in service shall remain a member of this retirement system. The reelection of any such officer or the election of any eligible employee to such office shall not constitute a break in service.

(b) The official in charge of such office, if he or she is responsible for the payment of the employees in that office, or the governing authority of the county, if the official and the employees are paid by it, shall deduct or collect from each member the employee contributions required by this chapter and shall remit the same to the retirement system as required by regulations. The state revenue commissioner is authorized and directed to pay from the funds appropriated for the operation of the Department of Revenue, the employer contributions required by this chapter, upon receipt of an invoice from the retirement system.

(c) In addition to the regular employer contributions required by this chapter, the state revenue commissioner is authorized and directed to pay from the funds appropriated for the operation of the Department of Revenue an additional contribution, as determined by the board of trustees, in a regular monthly amount sufficient to amortize, within a period of not more than 20 years, the prior service values of such members.

(d) Except for those persons holding office on June 30, 1983, and except as otherwise provided by subsection (f) of this Code section, any person who becomes a tax commissioner, tax collector, or tax receiver at any time after June 30, 1983, shall be a member of the retirement system under the provisions of Code Section 47-2-334 as a condition of holding office. Any person holding office as a tax commissioner, tax collector, or tax receiver on June 30, 1983, except such officials who are then members of the retirement system and except as otherwise provided by subsection (f) of this Code section, shall have the option of becoming a member of the retirement system, and such option must be exercised by not later than June 30, 1984. Such officials electing membership in the retirement system may obtain creditable service under the retirement system for actual previous service as tax commissioner, tax collector, or tax receiver or as an employee of any such official by paying to the board of trustees the regular employer and employee contributions for each year or portion thereof claimed as previous service, with the computation of such contributions being based on the compensation of the official at the time of becoming a member of the retirement system. In addition to such employer and employee contributions, the official claiming such previous service shall pay interest at the rate of 6 percent per annum on the amount of such contributions compounded annually from the time the previous service was rendered until payment is made to the board of trustees. The payment required for such previous service shall be made to the board of trustees at the time application is made for membership in the retirement system. Except for the right to obtain creditable service for previous service as provided in this subsection, any official holding office on June 30, 1983, who elects membership in the retirement system shall be under the provisions of Code Section 47-2-334.

(e) Except for those persons in employment on June 30, 1983, and except as otherwise provided by subsection (f) of this Code section, any person who becomes an employee of a tax commissioner, tax collector, or tax receiver at any time after June 30, 1983, shall have the option, which must be exercised within 180 days after the date of employment, of becoming a member of the retirement system under the provisions of Code Section 47-2-334. Any person employed by a tax commissioner, tax collector, or tax receiver on June 30, 1983, except such employees who are then members of the retirement system and except as otherwise

provided by subsection (f) of this Code section, shall have the option of becoming a member of the retirement system, and such option must be exercised by not later than June 30, 1984. Such employees electing membership in the retirement system may obtain creditable service under the retirement system for actual previous service as an employee of a tax commissioner, tax collector, or tax receiver by paying to the board of trustees the regular employer and employee contributions for each year or portion thereof claimed as previous service, with the computation of such contributions being based on the compensation of the employee at the time of becoming a member of the retirement system. In addition to such employer and employee contributions, the employee claiming such previous service shall pay interest at the rate of 6 percent per annum on the amount of such contributions compounded annually from the time the previous service was rendered until payment is made to the board of trustees. The payment required for such previous service shall be made to the board of trustees at the time application is made for membership in the retirement system. Except for the right to obtain creditable service for previous service as provided in this subsection, any person employed on June 30, 1983, who elects membership in the retirement system shall be under the provisions of Code Section 47-2-334.

(f) Notwithstanding any other provisions of this Code section, no tax commissioner, tax collector, tax receiver, or any employee of any such official shall be eligible for membership in the retirement system if such official or employee is covered or becomes covered by any other public retirement or pension system, excluding social security coverage and coverage under any county or other local retirement or pension system. The provisions of subsections (a), (b), and (c) of this Code section shall apply to any tax officials or their employees who become members of the retirement system pursuant to subsections (d) and (e) of this Code section. (Ga. L. 1958, p. 637, § 1; Ga. L. 1963, p. 41, § 1; Ga. L. 1969, p. 1013, § 1; Ga. L. 1973, p. 880, § 1; Ga. L. 1983, p. 655, § 1; Ga. L. 1990, p. 527, § 1; Ga. L. 2010, p. 1207, § 32/SB 436; Ga. L. 2012, p. 1051, § 2/SB 286.)

**The 2012 amendment**, effective July 1, 2012, added subsection (a.1).

**47-2-292.1. Tax commissioners, tax collectors, and tax receivers and all employees in their offices employed on or after July 1, 2012, ineligible for membership in the Employees' Retirement System of Georgia by operation of law.**

(a) The provisions of this Code section shall apply to tax commissioners, tax collectors, and tax receivers and employees in their offices who first or again take office or become employed on or after July 1, 2012.

(b) On and after July 1, 2012, the governing authority of each county shall have the option of including the county tax commissioner, tax collector, or tax receiver and all employees of such person's office as members of the retirement system. Such option shall be made by adopting a resolution and forwarding such resolution to the board of trustees.

(c) The official in charge of such office, if he or she is responsible for the payment of the employees in that office, or the governing authority of the county, if the official and the employees are paid by it, shall deduct or collect from each member the employee contributions required by this chapter and shall remit the same to the retirement system as required by regulations. The governing authority of the county shall pay to the board of trustees the employer contributions required by this chapter, upon receipt of an invoice from the retirement system.

(d) An election by a county governing authority made pursuant to subsection (b) of this Code section may be revoked in the same manner as the election was made, but the county's obligations as to any officer or employee who became a member of the retirement system as a result of such election shall continue, and the rights and benefits of any such officer or employee shall be unaffected by such revocation.

(e) All persons subject to the provisions of this Code section shall be members of the retirement system under the provisions of Article 10 of this chapter as a condition of holding office.

(f) Notwithstanding any other provisions of this Code section, no tax commissioner, tax collector, tax receiver, or any employee of any such official shall be eligible for membership in the retirement system if such officer or employee is covered or becomes covered by any other public retirement or pension system, excluding social security coverage. (Code 1981, § 47-2-292.1, enacted by Ga. L. 2012, p. 1051, § 3/SB 286.)

**Effective date.** — This Code section became effective July 1, 2012.

PART 10

EMPLOYEES OF CERTAIN STATE AUTHORITIES AND COMMISSIONS

**47-2-316. Membership in the retirement system of officers or employees of Georgia Agricultural Exposition Authority.**

(a) As used in this Code section, the term "Georgia Agricultural Exposition Authority" or "authority" means the Georgia Agricultural Exposition Authority established by Chapter 3 of Title 2, known as the "Georgia Agricultural Exposition Authority Act."

(b) Effective on July 1, 1988, or on first becoming officers or employees of the Georgia Agricultural Exposition Authority, all such officers and employees shall become members of the retirement system. Any officer or employee of the authority who was already a member of the retirement system on July 1, 1988, and any member of the retirement system who, without any break in service, becomes an officer or employee of the authority on or after July 1, 1988, shall continue in the same membership status without any interruption in membership service and without the loss of any creditable service. Except as otherwise provided in this subsection, any person becoming a member of the retirement system pursuant to the provisions of this Code section shall be subject to the provisions of Code Section 47-2-334.

(c) All employer contributions, including employee contributions made by the employer on behalf of members, which are required by this chapter shall be made for members who are subject to the provisions of this Code section from funds appropriated or otherwise available for the operation of the Georgia Agricultural Exposition Authority. The authority shall deduct from the salaries payable to such members the additional employee contributions required by this chapter. (Code 1981, § 47-2-316, enacted by Ga. L. 1988, p. 201, § 1; Ga. L. 2012, p. 794, § 1/HB 944.)

**The 2012 amendment**, effective May 1, 2012, substituted "established by Chapter 3 of Title 2" for "established by Part 8 of Article 7 of Chapter 3 of Title 12" in subsection (a).

**47-2-317. Membership in the retirement system of officers and employees of the Georgia Agrirama Development Authority.**

Reserved. Repealed by Ga. L. 2011, p. 504, § 1(1)/HB 144, effective May 11, 2011.

**Editor's notes.** — This Code section was based on Code 1981, § 47-2-317, en- acted by Ga. L. 1988, p. 264, § 1; Ga. L. 1994, p. 332, § 1; Ga. L. 2002, p. 440, § 1.

For present comparable provisions on retirement provisions for employees trans-

ferred to the Board of Regents, see Code Sections 47-2-181 and 47-3-181.

## CHAPTER 3

### TEACHERS RETIREMENT SYSTEM OF GEORGIA

Article 1	Sec.	from Employees' Retirement System of Georgia; limitations; additional contributions or adjustments required.
<b>General Provisions</b>	Sec.	
47-3-1. Definitions.	47-3-84.2.	Credit for service by members described in subparagraphs (N) and (P) of paragraph (28) of Code Section 47-3-1 [Repealed].
<b>Article 4</b>	<b>Article 7</b>	
<b>Membership in the Retirement System</b>	<b>Retirement Allowances, Disability Benefits, and Spouses' Benefits</b>	
47-3-60. Eligibility; termination; leaves of absence; service credit for postgraduate study; transfer of service credit.	47-3-127.1.	Employment of retired teacher as full-time teacher or in other capacities. [Repealed].
<b>Article 5</b>		
<b>Service Creditable Toward Retirement Benefits</b>		
47-3-81. Transfer of service credits		

### OPINIONS OF THE ATTORNEY GENERAL

**Teachers employed by commission charter schools.** — Unless and until the General Assembly adopts clarifying legislation, it is within the sound discretion of the Teachers Retirement System Board of Trustees to determine whether teachers who are employed not less than half-time by commission charter schools must be

members of the Teachers Retirement System. 2010 Op. Att'y Gen. No. 10-7.

**Eligibility of library employees.** — Regional and county library employees paid solely with local funds are required to be members of the Teachers Retirement System. 2011 Op. Att'y Gen. No. 11-2.

## ARTICLE 1

### GENERAL PROVISIONS

#### 47-3-1. Definitions.

As used in this chapter, the term:

(1) "Accumulated contributions" means the sum of all the amounts deducted from the earnable compensation of a member or paid by the

member to establish or reestablish credit for service, which amounts are credited to his or her individual account in the annuity savings fund, together with regular interest on such amounts, as provided in Code Section 47-3-41. Beginning July 1, 1987, "accumulated contributions" shall include the amount of employee contributions paid by employers on behalf of members and credited to the individual accounts of members in the annuity savings fund, together with regular interest thereon.

(2) "Actuarial equivalent" means a benefit of equal value when computed at regular interest upon the basis of the mortality tables last adopted by the board of trustees.

(3) "Annuity" means annual payments for life derived from the accumulated contributions of a member.

(4) "Annuity reserve" means the present value of all payments to be made on account of an annuity or benefit in lieu of an annuity, computed at regular interest upon the basis of the mortality tables adopted by the board of trustees.

(5) "Annuity savings fund" means the fund set forth under Code Section 47-3-41.

(6) "Average final compensation" means the average annual earnable compensation of a teacher during the two consecutive years of membership service producing the highest such average.

(7) "Beneficiary" means any person in receipt of a pension, an annuity, a retirement allowance, or other benefit under this chapter.

(8) "Board of trustees" means the board of trustees as provided for in Code Section 47-3-21 and whose purpose is to administer the retirement system.

(8.1) "Certified professional personnel" means employees of the State Board of Education or the Professional Standards Commission who, by policy of the State Board of Education, are required to possess a valid professional certificate issued by the Professional Standards Commission.

(9) "Commencement date" means January 1, 1945.

(10) "Creditable service" means prior service plus membership service and any other service established under this chapter.

(11) "Earnable compensation" means the full rate of regular compensation payable to a member for his or her full normal working time and includes compensation paid to a member by an employer from grants or contracts made by outside agencies with the employer. All moneys paid by an employer for a member or by a member into

any plan of tax sheltered annuity shall be included as earnable compensation for the purpose of computing any contributions required to be made to the retirement system and also for the purpose of computing any benefits or allowances payable under this chapter. Such term shall include contributions made to a qualified transportation plan, within the meaning of Section 132(f) of the federal Internal Revenue Code, and before tax or salary deferral contributions made under Sections 125, 401(k), 402(g)(3), 457, or 414(h) of the federal Internal Revenue Code to this retirement system or to any other retirement plan maintained by an employer.

(12) "Employer" means the State of Georgia, the county or independent board of education, the State Board of Education, the Board of Regents of the University System of Georgia, or any other agency of and within this state by which a teacher is paid. Notwithstanding any provisions in prior or future Acts to the contrary, the county and regional library boards of trustees shall be deemed to be the employer of the county or regional librarians, whose salaries are paid in full or in part from state funds.

(13) "Expense fund" means the fund set forth in Code Section 47-3-47.

(14) "Local retirement fund" means any teachers' retirement fund or other arrangement for the payment of retirement benefits to teachers, but not including the retirement system created under this chapter, which fund was maintained during the calendar year 1943 and is financed wholly or in part by contributions made by an employer.

(15) "Member" means any teacher included in the membership of the retirement system.

(16) "Membership service" means service as a teacher rendered while a member of the retirement system for which credit is allowable.

(17) "Pension" means periodic payments for life, derived from contributions of the state or other employer.

(18) "Pension accumulation fund" means the fund set forth under Code Section 47-3-43.

(19) "Pension reserve" means the present value of all payments to be made on account of a pension, or benefit in lieu of a pension, computed at regular interest upon the basis of the mortality tables last adopted by the board of trustees.

(19.1) "Plan year" means the 12 month period beginning on July 1 of each year.

(20) "Prior service" means service rendered prior to January 1, 1945, for which credit is allowable under Code Sections 47-3-83 and 47-3-86.

(21) "Public school" means any day school which is conducted within this state and which is under the authority and supervision of a duly elected county or independent board of education.

(22) "Regular interest" means interest compounded annually at such a rate as shall be determined by the board of trustees in accordance with this chapter.

(23) "Retirement" means withdrawal from service with a retirement allowance granted under this chapter.

(24) "Retirement allowance" means the sum of the annuity and the pension, or any optional benefit payable in lieu thereof, under Code Section 47-3-121. All retirement allowances shall be payable in equal monthly installments, provided that the board of trustees may pay a lump sum of equivalent actuarial value in lieu of a retirement allowance of less than \$10.00 per month.

(25) "Retirement system" means the Teachers Retirement System of Georgia established under Code Section 47-3-20.

(25.1) "Salary" shall have the same meaning as earnable compensation.

(26) "Service" means service rendered as a teacher and paid for by this state or other employer.

(27) "Service credit" means creditable service, as defined in this Code section.

(28) "Teacher" means a permanent status employee employed not less than half time as follows:

(A) Employees of a public school or a local board of education with the exception of those employees required to be members of the Public School Employees Retirement System as governed by Chapter 4 of this title;

(B) Public school lunchroom managers or supervisors, maintenance managers or supervisors, transportation managers or supervisors, and warehouse managers or supervisors who elect to participate in the retirement system pursuant to Code Section 47-3-63;

(C) Employees of the Board of Regents of the University System of Georgia with the exception of those employees who elect to participate in the Regents Retirement Plan as governed by Chapter

21 of this title and maintenance and custodial employees employed prior to July 1, 1978, who elected to forgo membership;

(D) Employees of any regional educational service agency created pursuant to Part 11 of Article 6 of Chapter 2 of Title 20;

(E) Certified professional personnel employed for the first time by the Department of Education on and after July 1, 1983, unless such personnel elect membership in the Employees' Retirement System of Georgia pursuant to subsection (h) of Code Section 47-3-60, and any employee of the Department of Education employed in a teaching, supervisory, or clerical capacity;

(F) Certified professional personnel employed by the Department of Education and who become members of this retirement system pursuant to the authority of subsection (i) of Code Section 47-3-60;

(G) Professional personnel employed for the first time by the Technical College System of Georgia on and after July 1, 1985, and all nonprofessional personnel employed for the first time after July 1, 1987, by postsecondary vocational-technical schools governed by the Technical College System of Georgia if otherwise eligible under laws, rules, and regulations, unless such personnel elect membership in the Employees' Retirement System of Georgia pursuant to subsection (j) of Code Section 47-3-60;

(H) Personnel employed by the Department of Education who are authorized to elect and elect to become or remain members of the retirement system pursuant to the applicable provisions of Code Section 47-3-60;

(I) Employees of any school operated by the Department of Education; and

(J) Librarians and clerical personnel employed by regional and county libraries. Any of such librarians and clerical personnel who were members of a local retirement system on January 1, 1977, and who elected to remain members of such local retirement system shall not be required to become members of this retirement system, or if they were members of this retirement system on that date, they may withdraw from such membership. This election must have been made, in writing, to the board of trustees by not later than January 1, 1978. Any of such librarians and clerical personnel failing to so notify the board of trustees by that date shall be members of this retirement system.

The term "teacher" shall not be deemed to include any emergency or temporary employee. The term "teacher" shall not include an individual classified by an employer as an independent contractor or a

leased employee within the meaning of Section 414(n) of the federal Internal Revenue Code, even if such individual is later reclassified by the Internal Revenue Service as a common law employee. The board of trustees shall determine in doubtful cases whether any person is included within the definition set forth in this paragraph. (Ga. L. 1943, p. 640, § 1; Ga. L. 1949, p. 1505, § 1; Ga. L. 1950, p. 261, §§ 1, 2; Ga. L. 1953, Nov.-Dec. Sess., p. 470, § 1; Ga. L. 1956, p. 13, § 1; Ga. L. 1957, p. 118, §§ 1, 2; Ga. L. 1959, p. 315, § 1; Ga. L. 1960, p. 935, § 1; Ga. L. 1962, p. 723, § 11; Ga. L. 1965, p. 438, § 1; Ga. L. 1965, p. 652, § 1; Ga. L. 1966, p. 513, § 1; Ga. L. 1969, p. 672, § 1; Ga. L. 1970, p. 217, § 1; Ga. L. 1971, p. 226, § 1; Ga. L. 1972, p. 176, § 1; Ga. L. 1972, p. 909, §§ 1, 2; Ga. L. 1974, p. 1179, § 1; Ga. L. 1976, p. 577, § 3; Ga. L. 1977, p. 1135, § 1; Ga. L. 1977, p. 1159, § 1; Ga. L. 1981, p. 1894, § 1; Ga. L. 1982, p. 684, § 3; Ga. L. 1982, p. 965, § 1; Ga. L. 1983, p. 3, § 36; Ga. L. 1983, p. 1859, §§ 2, 3; Ga. L. 1984, p. 1314, § 1; Ga. L. 1986, p. 1543, § 2; Ga. L. 1987, p. 575, § 8; Ga. L. 1987, p. 959, § 1; Ga. L. 1988, p. 379, § 1; Ga. L. 1988, p. 1351, § 2; Ga. L. 1988, p. 1742, § 2; Ga. L. 1990, p. 685, § 1; Ga. L. 1991, p. 1546, § 11; Ga. L. 1992, p. 2182, § 1; Ga. L. 1993, p. 86, § 1; Ga. L. 1993, p. 316, § 1; Ga. L. 2000, p. 131, § 1; Ga. L. 2005, p. 535, §§ 9, 10, 11/HB 460; Ga. L. 2008, p. 562, § 1/SB 434; Ga. L. 2009, p. 752, § 1/SB 98; Ga. L. 2010, p. 427, §§ 4, 5/HB 969; Ga. L. 2010, p. 1207, § 40/SB 436; Ga. L. 2012, p. 413, § 8/HB 805; Ga. L. 2013, p. 862, § 1/HB 345.)

**The 2012 amendment**, effective July 1, 2012, inserted "or her" in the first sentence of paragraphs (1) and (11); substituted "Technical College System of Georgia" for "State Board of Vocational Education" in subparagraph (28)(F); and substituted "as defined by Code Section 45-20-2" for "of the State Personnel Administration" in subparagraph (28)(F.1).

**The 2013 amendment**, effective July 1, 2013, rewrote paragraph (28).

**Editor's notes.** — Ga. L. 2012, p. 413, § 1/HB 805, not codified by the General Assembly, provides that: "The purpose of this Act is to make conforming amendments and correct references in Title 47 of the Official Code of Georgia Annotated, relating to retirement and pensions, relative to the abolition of the State Personnel Administration and the transfer of certain functions of such agency to the Department of Administrative Services as pro-

vided by a separate Act." The separate Act referred to is Ga. L. 2012, p. 446/HB 642, which became effective July 1, 2012, and which provides for the abolition of the State Personnel Administration and the transfer of functions.

Ga. L. 2012, p. 413, § 13/HB 805, not codified by the General Assembly, provides that: "This Act shall become effective on July 1, 2012, only if an Act abolishing the State Personnel Administration and providing for the transfer of certain functions of such agency to the Department of Administrative Services is enacted and becomes effective on that same date; otherwise, this Act shall not become effective and shall stand repealed on July 1, 2012." Ga. L. 2012, p. 446/HB 642, effective July 1, 2012, provides for the abolition of the State Personnel Administration and the transfer of functions.

**JUDICIAL DECISIONS**

**Cited** in Silliman v. Cassell, 292 Ga. 464, 738 S.E.2d 606 (2013).

**OPINIONS OF THE ATTORNEY GENERAL****ANALYSIS**

TEACHER

2. LIBRARIANS

**Teacher****2. Librarians**

**Eligibility of regional and county library employees.** — Paragraph (12) of O.C.G.A. § 47-3-1 merely provides that a certain entity, the local library board, will be deemed the “employer” for purposes of the Teachers Retirement System and will be responsible for administering the pay-

ment of contributions on behalf of member employees. The language in no way limits the membership in the Teachers Retirement System to only those regional and county library personnel who are paid in whole or in part by state funds. Thus, regional and county library employees paid solely with local funds are required to be members of the Teachers Retirement System. 2011 Op. Att'y Gen. No. 11-2.

**ARTICLE 4****MEMBERSHIP IN THE RETIREMENT SYSTEM****47-3-60. Eligibility; termination; leaves of absence; service credit for postgraduate study; transfer of service credit.**

(a) Any person who becomes a teacher after January 1, 1944, shall become a member of the retirement system as a condition of his or her employment, except as otherwise provided in this chapter.

(b) Any person who was a teacher on January 1, 1943, or became a teacher prior to January 1, 1944, shall be a member unless prior to January 1, 1944, he or she filed with the board of trustees, on a form provided by it, a notice of his or her election not to be included in the membership of the retirement system and a duly executed waiver of all present and prospective benefits which would otherwise accrue to him or her by participating in the retirement system. Such a teacher who elected not to become a member may at any time thereafter apply for and be admitted to membership, but without credit for that service rendered after July 1, 1943, and before the time he or she becomes a member, and without prior service credit.

(c) Reserved.

(d) A teacher otherwise eligible shall be classified as a member only while he or she is in the service of an employer not operating a local retirement system.

(e) The membership of any member shall terminate upon the member's:

- (1) Death;
- (2) Retirement under this retirement system;
- (3) Withdrawal of his or her contributions;
- (4) Rendering less than one year of service in a period of five consecutive years as a member; or
- (5) Employment by an employer which operates a local retirement fund, unless the member has ten or more years of creditable service with this retirement system, in which case the member may elect to continue membership in this retirement system, subject to the same terms and conditions as other members.

(e.1) A member who has not withdrawn the member's contributions to the retirement system and who has a break in service of more than four years but not more than five years may be reinstated to membership if the member pays a sum equal to 12 1/2 percent of the member's salary for the last year of service prior to the break in service. A member who has not withdrawn the member's contributions to the retirement system and who has a break in service of more than five years but not more than six years may be reinstated to membership if the member pays a sum equal to 25 percent of the member's salary for the last year of service prior to the break in service. A member who has not withdrawn the member's contributions to the retirement system may be reinstated to membership without paying the reinstatement fees after the member renders at least one year of membership service subsequent to the break in service. All interest credits shall cease after any such break in service but shall begin again on the date of payment of the sum required for reinstatement to membership or on the first day of July immediately following the completion of one year of membership service following the break in service. The board of trustees may approve the continued membership of a member while in the armed forces of the United States or other emergency wartime service of the United States, or a member whose membership would be terminated because of illness which prevents the member from rendering the service otherwise required by this Code section. The board of trustees may also grant an additional year of leave to a teacher for each child born to or adopted by such teacher while on authorized leave.

(f)(1) In the event a member desires to pursue a program of full-time study which will require that he or she render less than one year of service in a period of five consecutive years and which would otherwise result in termination of his or her membership, the board of trustees may approve a leave of absence for study purposes in

addition to the normal four-year break in service which the member could otherwise take, so that the combined break in service does not exceed six years. Such study leave shall be continuous. In no event shall such a member's account remain in an active status for longer than six consecutive years for such purpose.

(2) A member who undertakes full-time graduate study designed to advance or improve his or her training or abilities as a teacher is entitled to receive creditable service for a period of graduate study under the following conditions:

(A) The member must have been a full-time teacher in the public schools of this state or in the University System of Georgia under the board of regents immediately prior to the period of graduate study. Any such period of graduate study interrupted solely for a period of active duty military service begun during a period in which the military draft is in effect shall be deemed not to have been interrupted for purposes of this subparagraph;

(B) The member must submit a transcript or similar document to the retirement system as verification of the graduate study pursued;

(C) The member must return to full-time employment as a teacher in the public schools of this state or in the University System of Georgia under the board of regents for a minimum of five years following such period of graduate study;

(D) The member must pay the appropriate member contributions plus applicable accrued interest in accordance with regulations adopted by the board of trustees on the basis of the salary the member was receiving for full-time employment as a teacher immediately prior to the period of graduate study; and

(E) Either the member's present employer or the member must pay the appropriate employer contributions and applicable accrued interest thereon if the source of funds from which the member was paid immediately prior to his or her period of graduate study was other than state funds.

(3) The foregoing provisions of this subsection shall apply to periods of graduate study heretofore and hereafter granted, but nothing contained in this subsection shall be construed to rescind any creditable service granted prior to July 1, 1981, pursuant to this subsection or its predecessors.

(g) Any other provisions of law to the contrary notwithstanding, if a member with ten or more years' creditable service after becoming a member is employed by an employer operating a local retirement fund, his or her membership does not automatically terminate and he or she

may elect to maintain his or her membership rather than participate in the local retirement fund, subject to the same terms and conditions as other members of the retirement system.

(h) New certified professional personnel employed for the first time by the State Board of Education or by the State Department of Education on and after July 1, 1983, shall become members of the retirement system as a condition of employment, unless such personnel elect membership in the Employees' Retirement System of Georgia at the time of their employment. Such election shall be made in writing to the board of trustees of this retirement system and to the board of trustees of the Employees' Retirement System of Georgia. Once such election is made by such personnel, the election is irrevocable during the tenure of employment with the State Board of Education or the State Department of Education. The State Board of Education shall provide by regulation for informing prospective employees who are to be employed as certified professional personnel of the option provided for by this subsection so that such personnel may choose membership in this retirement system or the Employees' Retirement System of Georgia at the time of their employment.

(h.1) Personnel employed for the first time by the State Board of Education or by the State Department of Education on or after July 1, 1988, who, at the time of becoming so employed, are members of this retirement system shall continue as members of this retirement system unless such personnel elect membership in the Employees' Retirement System of Georgia at the time of their employment. Such election shall be made in writing to the board of trustees of this retirement system and to the board of trustees of the Employees' Retirement System of Georgia. Once such election is made by such personnel, the election is irrevocable during the tenure of employment with the State Board of Education or the State Department of Education. The State Board of Education shall provide by regulation for informing prospective employees who are subject to the provisions of this subsection of the option provided for by this subsection so that such personnel may choose to continue membership in this retirement system or become members of the Employees' Retirement System of Georgia at the time of their employment.

(i)(1) This subsection shall apply to certified professional personnel in the unclassified service as defined by Code Section 45-20-2 who are employed by the State Board of Education or the State Department of Education on July 1, 1986, and who are members of the Employees' Retirement System of Georgia and have at least five years of membership service in said retirement system as of July 1, 1986.

(2) This subsection shall also apply to any personnel employed by the State Board of Education or by the State Department of Educa-

tion at any time before July 1, 1988, who are members of the Employees' Retirement System of Georgia and who, at the time of becoming employed by said state board or department, had ten or more years of membership service in this retirement system.

(3) At any time from July 1, 1988, until not later than July 1, 1989, personnel described in paragraphs (1) and (2) of this subsection are authorized to transfer service credits and membership, including employer and employee contributions, from the Employees' Retirement System of Georgia to this retirement system. Any such personnel electing to transfer such service credits and membership to this retirement system shall be required to make additional contributions to this retirement system so that the annuity account balance of the transferring person shall be the same as though the transferring person had been a member of this retirement system during the period of time for which service credits are transferred from the Employees' Retirement System of Georgia to this retirement system or, in the absence of such payment, the board of trustees of this retirement system shall adjust the transferring person's credits in proportion to the contributions transferred from the Employees' Retirement System of Georgia to this retirement system. Any such personnel shall exercise the authority provided by this paragraph by written notification to the board of trustees of each of the retirement systems.

(4) If any person who transfers to this retirement system pursuant to the authority of this subsection subsequently becomes employed in a position where membership in the Employees' Retirement System of Georgia is required, any creditable service obtained under this retirement system for teaching service in school systems of other states pursuant to Code Section 47-3-89 shall not be eligible for transfer as creditable service to the Employees' Retirement System of Georgia, notwithstanding the provisions of Code Section 47-2-92 or any other provision of Chapter 2 of this title, relating to the Employees' Retirement System of Georgia.

(j)(1) Newly hired professional personnel employed for the first time by the Technical College System of Georgia on and after July 1, 1985, and all full-time nonprofessional personnel employed for the first time after July 1, 1987, by postsecondary vocational-technical schools governed by the state board shall become members of the Teachers Retirement System of Georgia as a condition of employment if otherwise eligible under laws, rules, and regulations, unless such personnel elect membership in the Employees' Retirement System of Georgia and are otherwise eligible under laws, rules, and regulations. Once such election is made by such personnel, the election is irrevocable during the tenure of employment with the Technical

College System of Georgia or any postsecondary vocational-technical school governed thereby. Newly hired employees not eligible for membership in the Teachers Retirement System of Georgia or the Employees' Retirement System of Georgia shall become members of the Public School Employees Retirement System as a condition of employment if eligible. The Technical College System of Georgia shall provide by regulation for informing prospective employees who are to be employed as certified professional personnel of the option provided for by this subsection so that such personnel shall choose membership in the Teachers Retirement System of Georgia or the Employees' Retirement System of Georgia or the Public School Employees Retirement System at the time of their employment.

(2) All full-time employees of a postsecondary vocational-technical school formerly operated by a local board of education or area postsecondary vocational education board as of July 1, 1987, or the date on which the state board assumes governance of the postsecondary vocational-technical school shall elect either to continue membership in the Teachers Retirement System of Georgia or to become members of the Employees' Retirement System of Georgia. Once such election is made by such personnel, the election is irrevocable during the tenure of employment with the Technical College System of Georgia or any postsecondary vocational-technical school governed thereby. All employees who are members of the Public School Employees Retirement System may elect to continue their membership in the Public School Employees Retirement System or to become members of the Teachers Retirement System of Georgia or the Employees' Retirement System of Georgia if otherwise eligible under laws, rules, or regulations.

(3) If any person who transfers to this retirement system pursuant to the authority of this subsection subsequently becomes employed in a position where membership in the Employees' Retirement System of Georgia is required, any creditable service obtained under this retirement system for teaching service in school systems of other states pursuant to Code Section 47-3-89 shall not be eligible for transfer as creditable service to the Employees' Retirement System of Georgia, notwithstanding the provisions of Code Section 47-2-92 or any other provision of Chapter 2 of this title.

(k) Any other provisions of law to the contrary notwithstanding, any person at least 60 years of age who first becomes a teacher on or after July 1, 1987, and any former member of the retirement system at least 60 years of age who has withdrawn from the retirement system employee contributions made during such former membership again becoming a teacher on or after July 1, 1987, shall have the right to decline membership in the retirement system. The right shall be

exercised by sending written notice to the board of trustees on a form provided by the board for such purpose. The right must be exercised within 90 days after becoming a teacher. Any person declining membership in the retirement system pursuant to this subsection shall not at any time thereafter be eligible for membership in the retirement system. Any person failing to exercise the right provided by this subsection within 90 days after becoming a teacher shall become and remain a member of the retirement system as a condition of continued employment. Any employee contributions made during the first 90 days as a teacher by a person who exercises the right provided by this subsection shall be reimbursed to the person within 30 days after the board of trustees receives the written notice declining membership in the retirement system.

(l) Any other provisions of this chapter or of Chapter 2 of this title to the contrary notwithstanding, any member of this retirement system with five or more years of continuous membership service who is employed by Central State Hospital and who, without any break in employment, becomes employed in a position where membership in the Employees' Retirement System of Georgia is ordinarily required shall have the option to remain a member of this retirement system, notwithstanding the change in the member's employment status. Such option shall be exercised by notification, in writing, to the boards of trustees of this retirement system and the Employees' Retirement System of Georgia. The employer of any such member who exercises the option provided by this subsection shall be an employer for the purposes of this chapter.

(m) Any other provision of law to the contrary notwithstanding, any person who is entitled pursuant to the provisions of this article to make an election between membership in this retirement system and membership in any other retirement system and who subsequently retires and is rehired by the same employer which employed him or her immediately prior to retirement shall continue membership in the retirement system under which he or she initially retired and shall not be entitled to elect membership in any other retirement system. (Ga. L. 1943, p. 640, § 3; Ga. L. 1947, p. 1494, § 1; Ga. L. 1952, p. 254, § 1; Ga. L. 1953, Jan.-Feb. Sess., p. 270, § 1; Ga. L. 1953, Nov.-Dec. Sess., p. 394, § 1; Ga. L. 1959, p. 319, § 1; Ga. L. 1960, p. 1116, § 3; Ga. L. 1961, p. 388, § 2; Ga. L. 1964, p. 699, § 1; Ga. L. 1969, p. 384, § 1; Ga. L. 1971, p. 409, § 1; Ga. L. 1972, p. 896, § 1; Ga. L. 1973, p. 903, § 1; Ga. L. 1975, p. 1579, § 1; Ga. L. 1976, p. 1458, § 1; Ga. L. 1977, p. 825, § 1; Ga. L. 1979, p. 1007, § 1; Ga. L. 1980, p. 828, § 1; Ga. L. 1981, p. 1327, § 1; Ga. L. 1983, p. 1859, § 4; Ga. L. 1985, p. 209, § 1; Ga. L. 1986, p. 1543, § 3; Ga. L. 1986, p. 1547, §§ 1, 2; Ga. L. 1987, p. 575, § 9; Ga. L. 1987, p. 959, § 4; Ga. L. 1988, p. 1351, §§ 3, 4; Ga. L. 1988, p. 1742, § 3; Ga. L. 1992, p. 477, § 1; Ga. L. 1993, p. 1690, § 4; Ga. L. 1996, p. 389,

§ 1; Ga. L. 2000, p. 1268, § 1; Ga. L. 2008, p. 562, § 1/SB 434; Ga. L. 2009, p. 752, § 1/SB 98; Ga. L. 2010, p. 1207, § 41/SB 436; Ga. L. 2012, p. 413, § 9/HB 805.)

**The 2012 amendment**, effective July 1, 2012, substituted “as defined by Code Section 45-20-2” for “of the State Personnel Administration” in paragraph (i)(1).

**Editor's notes.** — Ga. L. 2012, p. 413, § 1/HB 805, not codified by the General Assembly, provides that: “The purpose of this Act is to make conforming amendments and correct references in Title 47 of the Official Code of Georgia Annotated, relating to retirement and pensions, relative to the abolition of the State Personnel Administration and the transfer of certain functions of such agency to the Department of Administrative Services as provided by a separate Act.” The separate Act referred to is Ga. L. 2012, p. 446/HB 642, which became effective July 1, 2012, and

which provides for the abolition of the State Personnel Administration and the transfer of functions.

Ga. L. 2012, p. 413, § 13/HB 805, not codified by the General Assembly, provides that: “This Act shall become effective on July 1, 2012, only if an Act abolishing the State Personnel Administration and providing for the transfer of certain functions of such agency to the Department of Administrative Services is enacted and becomes effective on that same date; otherwise, this Act shall not become effective and shall stand repealed on July 1, 2012.” Ga. L. 2012, p. 446/HB 642, effective July 1, 2012, provides for the abolition of the State Personnel Administration and the transfer of functions.

## ARTICLE 5

### SERVICE CREDITABLE TOWARD RETIREMENT BENEFITS

#### 47-3-81. Transfer of service credits from Employees' Retirement System of Georgia; limitations; additional contributions or adjustments required.

(a) Any other provisions of law to the contrary notwithstanding, any member, other than a member subject to subsection (b) of this Code section, who was previously a member of the Employees' Retirement System of Georgia and who has service credits with said employees' retirement system may have such service credits and accumulated contributions under said employees' retirement system transferred to the Teachers Retirement System of Georgia. Any member who elects to transfer such service credits and accumulated contributions shall notify the board of trustees of this retirement system in writing of the member's election to do so. Such transferred service credits shall not be used in determining the qualifications of a member for benefits other than vested rights, disability, death, or normal service retirement. Such member shall be required to make additional contributions to this retirement system so that the member's annuity account balance will be the same as though the member had been a member of this retirement system during the period of time for which service credits are transferred from the Employees' Retirement System of Georgia to this retirement system or, in the absence of such payment, the board of trustees shall adjust the member's credits in proportion to the accumu-

lated contributions transferred from the Employees' Retirement System of Georgia to this retirement system. The Employees' Retirement System of Georgia shall pay an employer contribution plus regular interest to the Teachers Retirement System of Georgia for each member transferring service credits and accumulated contributions to the Teachers Retirement System of Georgia authorized in this Code section. The amount of such employer contributions shall be 6 percent of the reported compensation of the member while a member of said employees' retirement system. The employees' retirement system shall pay an additional amount of retirement contributions pursuant to Code Section 47-2-51 for an employees' retirement system member covered by Code Section 47-2-334. This payment shall be placed in the pension accumulation fund and will adjust the amount of employee retirement contributions required for service credit.

(b)(1) Any provision of this title to the contrary notwithstanding, any vested member of the Employees' Retirement System of Georgia who becomes a teacher may, at his or her option, elect to remain a member of the Employees' Retirement System of Georgia.

(2) If a person subject to this subsection elects to remain a member of the Employees' Retirement System of Georgia, the employer and teacher shall make all contributions to such retirement system and perform such other acts as are required by law or regulation.

(3) If a person subject to this subsection does not elect to remain a member of the Employees' Retirement System of Georgia, he or she shall become a member of this retirement system subject to all provisions of this chapter.

(4) This subsection shall be applicable to each person who was a member of this retirement system on January 1, 1997, and to all persons who become a member on or after such date. Any person subject to this subsection who became a member of the Employees' Retirement System of Georgia between January 1, 1997, and June 30, 1998, who elects to remain a member of this retirement system shall be governed by the provisions of subsection (a) of this Code section relating to the transfer of service credits and accumulated contributions.

(5) Any person eligible to make the election provided for in this subsection shall do so in writing to the board of trustees not later than September 30, 2000, or within 60 days after the person became a teacher, whichever date is later. Once made, the election shall be irrevocable.

(6) The provisions of this subsection shall not become a part of the employment contract and shall be subject to subsequent legislation; provided, however, that no person who has made the election pro-

vided by this subsection shall be affected by any subsequent legislation.

(c)(1) At the time the membership of a person subject to Article 10 of Chapter 2 of this title is transferred from the Employees' Retirement System of Georgia to this retirement system, this retirement system shall receive the funds transferred from the Employees' Retirement System of Georgia pursuant to Code Section 47-2-181 and, as applicable, add the accrued benefit transferred from the Employees' Retirement System of Georgia to the accrued benefit or the balance of employee contributions and interest. The total benefits of any such member shall be subject to the rules of this retirement system.

(2) At the time the membership of a member of this retirement system transfers to the Employees' Retirement System of Georgia and is subject to Article 10 of Chapter 2 of this title, this retirement system shall:

(A) Calculate the accumulated benefit using the service and compensation at the time of the transfer;

(B) Calculate the present value of the accrued benefit using methods and assumptions adopted by the board of trustees; and

(C) Transfer to the Employees' Retirement System of Georgia the greater of the present value of the accumulated benefit or the balance of the employee contributions and interest.

(3) All service transferred pursuant to this subsection shall be calculated as credit in this retirement system for all purposes in this retirement system.

(4) This retirement system and the Employees' Retirement System of Georgia shall recalculate the accumulated benefit of any person transferred between such retirement systems from January 1, 2009, through June 30, 2012, according to the methods prescribed by this subsection. (Ga. L. 1962, p. 723, § 16; Ga. L. 1966, p. 513, § 4; Ga. L. 1968, p. 1405, § 2; Ga. L. 1986, p. 1543, § 4; Ga. L. 1992, p. 1105, § 1; Ga. L. 1998, p. 775, § 2; Ga. L. 2000, p. 1273, § 2; Ga. L. 2001, p. 21, § 1; Ga. L. 2012, p. 1051, § 4/SB 286.)

**The 2012 amendment**, effective July 1, 2012, added subsection (c).

**47-3-84.2. Credit for service by members described in subparagraphs (N) and (P) of paragraph (28) of Code Section 47-3-1.**

Repealed by Ga. L. 2013, p. 862, § 2/HB 345, effective July 1, 2013.

**Editor's notes.** — This Code section was based on Code 1981, § 47-3-84.2, en- acted by Ga. L. 1990, p. 685, § 2; Ga. L. 1991, p. 130, § 1.

## ARTICLE 7

### RETIREMENT ALLOWANCES, DISABILITY BENEFITS, AND SPOUSES' BENEFITS

#### 47-3-127.1. Employment of retired teacher as full-time teacher or in other capacities.

Repealed by Ga. L. 2012, p. 667, § 1/HB 208, effective June 30, 2013.

**Editor's notes.** — This Code section was based on Code 1981, § 47-3-127.1, enacted by Ga. L. 2002, p. 585, § 3; Ga. L. 2003, p. 139, § 1; Ga. L. 2004, p. 107, § 22; Ga. L. 2004, p. 1061, § 1; Ga. L. 2005, p. 533, § 1/HB 495; Ga. L. 2008, p. 1094, § 1/SB 327; Ga. L. 2009, p. 368, § 1/SB 48; Ga. L. 2012, p. 667, § 1/HB 208.

## CHAPTER 4

### PUBLIC SCHOOL EMPLOYEES RETIREMENT SYSTEM

#### Article 4

##### Employee and Employer Contributions to the Retirement System

Sec.

47-4-60. Amount of contributions; manner of payment.

#### Article 6

##### Retirement, Retirement Allowances, and Disability Benefits

Sec.

47-4-101. Retirement benefits payable upon normal, early, or delayed retirement.

## ARTICLE 4

### EMPLOYEE AND EMPLOYER CONTRIBUTIONS TO THE RETIREMENT SYSTEM

#### 47-4-60. Amount of contributions; manner of payment.

(a) Each member shall contribute \$4.00 monthly as the employee contribution toward the cost of the retirement system; provided, however, that any person first or again becoming a member of this retirement system on or after July 1, 2012, shall contribute \$10.00 monthly as the employee contribution. Each local unit of administration shall deduct such amount each month from the compensation of each of its employees who is a member of the retirement system and pay the amounts so deducted to the board. The board shall specify by rules and regulations the time and manner such amounts shall be paid to it.

(b) The employer contributions toward the cost of the retirement system shall be as actuarially determined and approved by the board; and, in making such determination, each local unit of administration shall supply the board with such information at such times and in such manner as the board shall specify by rules and regulations. The amounts determined as the employer contributions shall be certified to the state treasurer at such times as the board shall specify by rules and regulations. It shall be the duty of the state treasurer to pay to the board, from funds appropriated or otherwise available to the retirement system, the amounts so certified by the board. All employer contributions shall be irrevocable and may be used only for the exclusive benefit of members or their beneficiaries. (Ga. L. 1969, p. 998, § 10; Ga. L. 1982, p. 3, § 47; Ga. L. 1993, p. 1402, § 18; Ga. L. 2010, p. 863, § 3/SB 296; Ga. L. 2012, p. 1284, § 1/SB 246.)

**The 2012 amendment**, effective July 1, 2012, added “; provided, however, that any person first or again becoming a member of this retirement system on or after July 1, 2012, shall contribute \$10.00 monthly as the employee contribution” to the end of the first sentence in subsection (a).

## ARTICLE 6

### RETIREMENT, RETIREMENT ALLOWANCES, AND DISABILITY BENEFITS

#### **47-4-101. Retirement benefits payable upon normal, early, or delayed retirement.**

(a) Any member may retire and upon application to the board receive the retirement benefits set forth in this Code section after obtaining a minimum of ten years of creditable service. The effective date of retirement shall be the first of the month in which the application is received by the board, provided that no retirement application will, in any case, be effective earlier than the first of the month following the final month of the applicant's employment. If a member retires before obtaining ten years of creditable service, he or she shall receive a lump sum refund of his or her accumulated contributions made under the retirement system to the date of his or her retirement.

(b)(1) Upon retirement on the normal retirement date, a member shall receive a monthly retirement benefit, payment of which shall commence on the effective date of retirement and which shall be payable on the first day of each month thereafter during the member's lifetime. The amount of each monthly retirement payment shall be \$16.50 multiplied by the number of the member's years of creditable service. The retirement benefit provided under this subsection shall be payable to those members who have already retired under this chapter as well as those members who retire in the future;

provided, however, that no benefit increase above \$15.00 per month shall be applied to the benefit of persons who were retired on the effective date of this Act. If the General Assembly at any time appropriates funds expressly intended to fund the benefits provided in this subsection and such amount so appropriated is not sufficient to fund the maximum amount allowable, then the retirement benefit otherwise payable under this subsection shall be reduced pro rata by the board in accordance with the funds actually appropriated by the General Assembly for such purpose, but in no event shall the retirement benefit be less than \$14.75 multiplied by the member's years of creditable service.

(2) Subject to the terms and limitations of this subsection, the board of trustees is authorized to adopt from time to time a method or methods of providing for increases in the retirement allowance paid up to the maximum benefit provided in paragraph (1) of this subsection. Such method shall be based upon:

(A) The recommendation of the actuary of the board of trustees;

(B) The maintenance of the actuarial soundness of the fund in accordance with the standards provided in Code Section 47-20-10 or such higher standards as may be adopted by the board; and

(C) Such other factors as the board deems relevant.

(c) Upon retirement on his delayed retirement date, a member shall receive a monthly retirement benefit, payment of which shall commence on his delayed effective date of retirement and which shall be payable on the first day of each month thereafter during his lifetime. The amount of each monthly retirement benefit shall be computed in the same manner as for a normal retirement benefit and shall be based on the number of years of creditable service as of the member's delayed retirement date.

(d) Any member who exercises his right to retire at an early retirement date pursuant to subsections (c) through (e) of Code Section 47-4-100 shall receive a monthly retirement benefit which shall begin on the early effective date of retirement. Such benefit shall be payable on the first day of each month thereafter during his lifetime. The amount of each monthly retirement benefit shall be computed in the same manner as for a normal retirement benefit and shall be based on the number of years of creditable service as of the member's early retirement date, provided that such benefit shall be actuarially reduced at the rate of one-half of 1 percent for each full month that such member is under 65 years of age. (Ga. L. 1969, p. 998, § 7; Ga. L. 1971, p. 917, § 2; Ga. L. 1973, p. 1197, §§ 4-6; Ga. L. 1977, p. 597, § 1; Ga. L. 1980, p. 1787, § 1; Ga. L. 1982, p. 3, § 47; Ga. L. 1983, p. 1859, § 5; Ga. L. 1988, p. 880, § 1; Ga. L. 1992, p. 1154, § 1; Ga. L. 1998, p. 151, § 1; Ga.

L. 2002, p. 1131, § 1; Ga. L. 2003, p. 409, § 1; Ga. L. 2006, p. 1010, § 2/HB 1020; Ga. L. 2012, p. 1284, § 2/SB 246.)

**The 2012 amendment**, effective July 1, 2012, in paragraph (b)(1), in the second sentence, substituted “\$16.50” for “\$15.00”, added “; provided, however, that no benefit increase above \$15.00 per month shall be

applied to the benefit of persons who were retired on the effective date of this Act” to the end of the third sentence, and substituted “\$14.75” for “\$12.00” in the last sentence.

## CHAPTER 6

### GEORGIA LEGISLATIVE RETIREMENT SYSTEM

Article 1	Sec.	
<b>General Provisions</b>		
Sec.		
47-6-1. Definitions.		retirement allowance; early retirement; amount of retirement allowance; compliance with federal tax laws; increases in retirement allowance.
<b>Article 3</b>		
<b>Membership in the Retirement System</b>	47-6-84.	Termination of retirement allowance upon return to service; retirement benefits for retired members returning to service in the General Assembly; board of trustees to be notified within 30 days if public employer employs retired plan member.
47-6-40. Qualifications for membership; irrevocable election for certain members of General Assembly; membership of persons who cease to become members before age 60; termination of membership; application for additional creditable service.		
<b>Article 6</b>		
<b>Retirement, Retirement Allowances, and Death Benefits</b>		
47-6-80. Eligibility and application for a		

## ARTICLE 1

### GENERAL PROVISIONS

#### 47-6-1. Definitions.

As used in this chapter, the term:

(1) “Accumulated contributions” means the sum of all amounts deducted from the compensation of a member or paid by the member to establish or reestablish credit for service, which amounts are credited to his or her individual account in the system, together with regular interest thereon. Beginning on January 12, 1981, this term shall include the amount of employee contributions paid by the

employer on behalf of members, together with regular interest thereon, excluding employee contributions paid by the employer for group term life insurance coverage.

(2) "Beneficiary" means any person in receipt of a retirement allowance or other benefit as provided by the system.

(3) "Board" means the Board of Trustees of the Employees' Retirement System of Georgia; provided, however, that if any member of such board of trustees is an active or retired member or a beneficiary of this retirement system, he or she shall not serve as a member of the board of trustees of this retirement system.

(4) "Creditable service" means prior service and membership service for which credit is allowable under this chapter, but in no case shall more than one year of service be creditable for all service in one calendar year, nor shall it include any service which has been or may be credited to a member by any other public retirement system of this state.

(5) "Date of establishment" means July 1, 1967.

(6) "Member" means any person included in the membership of the system.

(7) "Membership service" means service as paid for by the member, as provided for in Code Section 47-6-60.

(8) "Prior service" means service rendered prior to January 1, 1954, as a Representative, Senator, or staff member of the General Assembly and service, day for day, on active duty in any component of the armed forces of the United States during wartime or during any conflict in which military personnel were committed by the President of the United States, provided that no such service in excess of five years shall be creditable.

(8.1) "Prior service" shall also include military service which is creditable under Code Section 47-6-70.1.

(9) "Retirement allowance" means monthly payments for life pursuant to Code Section 47-6-80.

(10) "System" means the Georgia Legislative Retirement System. (Ga. L. 1967, p. 259, § 1; Ga. L. 1968, p. 1354, § 1; Ga. L. 1972, p. 704, § 1; Ga. L. 1980, p. 611, § 1; Ga. L. 1980, p. 925, § 6; Ga. L. 1983, p. 1856, § 2; Ga. L. 1985, p. 209, § 1; Ga. L. 1986, p. 30, § 1; Ga. L. 2000, p. 1277, § 1; Ga. L. 2009, p. 947, § 24/HB 202; Ga. L. 2012, p. 663, § 1/HB 183.)

**The 2012 amendment**, effective July 1, 2012, deleted former paragraph (10), which read: "Staff members" means the Secretary of the Senate, the Clerk of the

House of Representatives, and the messenger and doorkeeper for each of the two houses of the General Assembly.”; and

redesignated former paragraph (11) as present paragraph (10).

## ARTICLE 3

### MEMBERSHIP IN THE RETIREMENT SYSTEM

#### **47-6-40. Qualifications for membership; irrevocable election for certain members of General Assembly; membership of persons who cease to become members before age 60; termination of membership; application for additional creditable service.**

(a) Each person who first or again becomes a member of the General Assembly on or after July 1, 2012, may make an irrevocable election at the beginning of each term of office to become a member of the Georgia Legislative Retirement System within two months of taking office as a member of the General Assembly. Any member of this retirement system who is elected to a consecutive term of office and who has elected membership in this retirement system shall be deemed to have continuous membership from term to term and shall not be required to reapply each term.

(b) If a member of the system ceases to be a member of the General Assembly before attaining age 60 and for reasons other than death, such member, unless he or she withdraws his or her contributions pursuant to Code Section 47-6-85, shall continue as a noncontributing member of the system. Any such noncontributing member shall not gain any additional membership service. If he or she again becomes a member of the General Assembly and a contributing member of the system, such member shall retain the membership service previously credited to him or her. If a member subject to this subsection withdraws his or her contributions upon ceasing to be a member of the General Assembly, any membership service credited to him or her at the time such contributions are withdrawn shall be forfeited and may not be reestablished if he or she again becomes a member of the General Assembly.

(c) Should any member of the system in any period of five consecutive years after becoming a member be absent from service more than four years, withdraw his or her contributions or become a beneficiary of such system, or die, he or she shall thereupon cease to be a member.

(d) A member of the General Assembly serving on July 1, 2012, may make an irrevocable election to become a member of this retirement system and may obtain creditable service for prior service as a member of the General Assembly as provided in this Code section. In order to obtain such additional creditable service, the member must:

(1) Make application to the board of trustees in such manner as the board deems appropriate not later than December 31, 2012. Such application and payment must be made in conjunction with and simultaneously with the member's application for membership; and

(2) Pay to the board of trustees an amount determined by the board of trustees to be sufficient to cover the full actuarial cost of granting the creditable service as provided in this Code section;

provided, however, that no creditable service shall be granted or obtained pursuant to this Code section if such service may be used to calculate creditable service under any other public retirement system created by this title.

(e) A member of the General Assembly may obtain creditable service for membership in the General Assembly only for the purposes of the Georgia Legislative Retirement System, and no service as a member of the General Assembly which is obtained after December 31, 1985, by any such member shall be creditable or used as creditable service for the purposes of any other public retirement or pension system of this state. (Ga. L. 1967, p. 259, § 4; Ga. L. 1971, p. 930, § 1; Ga. L. 1980, p. 611, § 2; Ga. L. 2010, p. 1207, § 51/SB 436; Ga. L. 2012, p. 663, § 2/HB 183.)

**The 2012 amendment**, effective July 1, 2012, substituted the present provisions of subsection (a) for the former provisions, which read: "All persons who are members of the General Assembly on July 1, 1967, shall become members of the system as of such date, except that within six months from such date any such person may irrevocably elect not to be a

member of the system. All other persons shall become members of the system on taking office as members of the General Assembly. Staff members shall have the option to become members of the system under the same conditions as elected members of the General Assembly."; and added subsections (d) and (e).

## ARTICLE 6

### RETIREMENT, RETIREMENT ALLOWANCES, AND DEATH BENEFITS

#### **47-6-80. Eligibility and application for a retirement allowance; early retirement; amount of retirement allowance; compliance with federal tax laws; increases in retirement allowance.**

(a) Upon the written application to the board, any member of the system who (1) has attained age 65 and has completed eight or more years of creditable service or (2) has attained age 62 and has completed eight or more years of membership service shall be retired by the board on a retirement allowance and shall thereupon become a beneficiary of the system, provided that he is no longer in the service of the state,

whether as a member of the General Assembly or otherwise. In lieu of eight years of service, a member may substitute four terms of office in the General Assembly.

(b) The effective date of retirement shall be the first day of the month in which the application is received by the board, but such effective date shall not, in any case, be earlier than the first day of the month following the final month of the applicant's employment. Applications for retirement shall not be accepted more than 90 days in advance of the effective date of retirement.

(c) Normal retirement age for a member with at least eight years of membership service shall be the date the member has reached 62 years of age. Normal retirement age for a member with less than eight years of membership service but with at least eight years of creditable service shall be the date the member has reached 65 years of age. Any member of the system who has completed eight or more years of membership service and who has attained age 60 may elect to retire prior to age 62, provided that in such event, the member's retirement allowance shall be reduced by 5 percent for each year below age 62.

(d) Upon such retirement under subsection (a) of this Code section, the retired member shall receive a monthly service retirement allowance which shall be equal to \$28.00 multiplied by the number of years of the member's creditable service.

(d.1) The board of trustees is authorized to provide for the payment of benefits to members or beneficiaries of the retirement system at a time and under circumstances not provided for in this chapter to the extent that such payment is required to maintain the retirement system as a qualified retirement plan for purposes of federal income tax laws and regulations.

(e) Any increase in benefits payable under the retirement system which becomes effective as a result of a change in the benefit formula provided for by subsection (d) of this Code section shall be applicable to beneficiaries of the system who are receiving benefits at the time the increase becomes effective.

(f) Subject to the terms and limitations of this Code section, the board of trustees is authorized to adopt from time to time a method or methods of providing for increases in the retirement allowance provided in subsection (d) of this Code section for persons theretofore or thereafter retiring under this article. Such method shall be based upon:

- (1) The recommendation of the actuary of the board of trustees;
- (2) The maintenance of the actuarial soundness of the fund in accordance with the standards provided in Code Section 47-20-10 or such higher standards as may be adopted by the board; and

(3) Such other factors as the board deems relevant; provided, however, that any such increase shall be uniform and shall apply equally to all members of this retirement system.

(g) Notwithstanding any other provision of this Code section, no member who becomes a member of this retirement system on or after July 1, 2009, shall be entitled to receive any postretirement benefit adjustment. (Ga. L. 1967, p. 259, § 6; Ga. L. 1968, p. 1354, § 2; Ga. L. 1971, p. 930, § 2; Ga. L. 1979, p. 931, § 1; Ga. L. 1980, p. 611, § 3; Ga. L. 1986, p. 1255, § 2; Ga. L. 1990, p. 510, § 1; Ga. L. 2000, p. 1277, § 2; Ga. L. 2009, p. 320, § 3/HB 452; Ga. L. 2009, p. 947, § 26/HB 202; Ga. L. 2013, p. 688, § 1/SB 178.)

**The 2013 amendment, effective July 1, 2013, added subsection (d.1).**

**47-6-84. Termination of retirement allowance upon return to service; retirement benefits for retired members returning to service in the General Assembly; board of trustees to be notified within 30 days if public employer employs retired plan member.**

(a) As used in this Code section, the term "public employer" means any branch of state government and any state agency, department, board, bureau, or other instrumentality. This term also includes the Board of Regents of the University System of Georgia and any public school system, including, but not limited to, primary, secondary, and postsecondary institutions operated by local or independent boards of education that receive any funds from the State of Georgia or any agency thereof.

(b)(1) Except as provided in paragraph (2) of this subsection, if any retired member returns to the service of a public employer in any position, including, without limitation, service directly or indirectly as or for an independent contractor, except as a member of the General Assembly, the member's retirement allowance shall cease. Upon cessation of such service, the retired member, after proper notification to the board, shall receive the same retirement allowance which the member was receiving prior to returning to service of a public employer.

(2) Notwithstanding any other provisions in this chapter to the contrary, the retirement allowance of a retired member who returns to the service of a public employer in any position, including, without limitation, service directly or indirectly as or for an independent contractor, other than as a member of the General Assembly shall not cease provided that such member performs no more than 1,040 hours of such service in any calendar year.

(c)(1) If a retired member returns to service as a member of the General Assembly after the member has reached normal retirement age, the retired member may either continue to receive a retirement benefit while serving as a member of the General Assembly or reestablish active membership in the retirement system. If the election is to reestablish active membership in the retirement system, the member shall have the same creditable service which the member possessed at the time of retirement and shall accumulate additional creditable service so long as such active membership continues. Except as otherwise provided by paragraph (2) of this subsection, a retired member who returns to service in the General Assembly shall make the election provided for in this paragraph within 30 days after taking office. Such election shall be made in writing to the board of trustees and shall be irrevocable. If a retired member returns to service as a member of the General Assembly before the member has reached normal retirement age, the retired member shall reestablish active membership in the retirement system. The member shall have the same creditable service which the member possessed at the time of retirement and shall accumulate additional creditable service so long as such active membership continues.

(2) A retired member who returned to service in the General Assembly prior to the existence of the option to reestablish active membership in the retirement system shall have the right to make the election provided for in paragraph (1) of this subsection at any time prior to January 1, 1991. In addition to creditable service provided for in paragraph (1) of this subsection, any such retired member who elects to reestablish active membership in the retirement system may obtain creditable service for service in the General Assembly rendered from the time of returning to service in the General Assembly until the date of reestablishing active membership in the retirement system. In order to obtain such creditable service, the member shall pay to the board of trustees the employee contributions which would have been paid to the retirement system during the period for which such creditable service is claimed, plus regular interest thereon compounded annually from the time the service in the General Assembly was rendered until the date of payment.

(d) Any public employer that employs a retired plan member shall within 30 days of the employee's accepting employment notify the board of trustees in writing stating the name of the plan member and the number of hours the employee is expected to work annually and shall provide such other information as the board may request. Any employer that fails to notify the board of trustees as required by this subsection shall reimburse the retirement system for any benefits wrongfully paid. It shall be the duty of the retired plan member seeking employment by

the employer to notify the employer of his or her retirement status prior to accepting such position. If a retired plan member fails to so notify the employer and the employer becomes liable to the retirement system, the plan member shall hold the employer harmless for all such liability. (Ga. L. 1967, p. 259, § 11; Ga. L. 1980, p. 611, § 5; Ga. L. 1990, p. 534, § 2; Ga. L. 1992, p. 2748, § 1; Ga. L. 2009, p. 752, § 1/SB 98; Ga. L. 2009, p. 947, § 27/HB 202; Ga. L. 2012, p. 663, § 3/HB 183; Ga. L. 2013, p. 688, § 2/SB 178.)

**The 2012 amendment**, effective July 1, 2012, added subsection (c).

**The 2013 amendment**, effective July 1, 2013, added subsection (a); redesignated former subsections (a) and (b) as subsections (b) and (c), respectively; in paragraph (b)(1), substituted “returns to the service of a public employer” for “who has not yet reached normal retirement age returns to the service of the state” in the first sentence and substituted “to service of a public employer” for “to state service” in the last sentence; in paragraph (b)(2), deleted “who has reached normal retirement age or has not been employed by or rendered service for the state and” following “retired member” and substi-

tuted “a public employer” for “the state”; deleted former paragraph (c)(1), which read: “As used in this subsection, the term ‘public employer’ means any branch of state government and any state agency, department, board, bureau, or other instrumentality. This term also includes the Board of Regents of the University System of Georgia and any public school system, including, but not limited to, primary, secondary, and postsecondary institutions operated by local or independent boards of education that receive any funds from the State of Georgia or any agency thereof.”; and redesignated former paragraph (c)(2) as present subsection (d).

## CHAPTER 7

### GEORGIA FIREFIGHTERS' PENSION FUND

#### Article 4

#### Financing the Fund

Sec.

effect of failure to pay dues in timely manner.

Sec.

47-7-60. Dues required of members; ef-

#### ARTICLE 4

#### FINANCING THE FUND

#### 47-7-60. Dues required of members; effect of failure to pay dues in timely manner.

(a) Each firefighter or volunteer firefighter accepted for membership in the fund shall pay to the fund the sum of \$25.00 for each month of service as a firefighter or volunteer firefighter in a fire department. Such monthly payments shall be due on or before the tenth day of each month of service.

(b)(1) Any member who becomes six months in arrears in making such payments shall be removed from membership in the fund and shall thereafter be ineligible for membership in or benefits under the fund, except as provided in this subsection and in subsection (c) of this Code section.

(2) Any member who has been removed from membership in the fund under paragraph (1) of this subsection may make application to the board for reinstatement of membership. As a condition of such reinstatement, the applicant must pay to the fund a reinstatement fee of \$100.00. Upon such reinstatement, such member shall be entitled to credit for service rendered after reinstatement. If such member has not withdrawn the dues he or she paid to the fund prior to the suspension, then he or she shall also be entitled to creditable service for service rendered prior to the suspension.

(3) An applicant for reinstatement of membership in the fund as provided in this subsection shall not be entitled to reinstatement unless at the time of such application the applicant meets the requirements set forth in Code Section 47-7-40 as a prerequisite to reinstatement to active membership.

(c) If a member who has attained the minimum service credits required for a normal retirement benefit under Code Section 47-7-100 is suspended from membership in the fund under this Code section and is not reinstated, then, provided that such member does not withdraw dues paid to the fund prior to his or her suspension, upon termination of service, such member shall be entitled to a normal retirement benefit payable under Code Section 47-7-100. The normal retirement benefit to which such member may thereafter become entitled upon termination of service shall be calculated as of the date of the member's suspension from the fund, using the service credits and age the member had attained on the date of suspension, which shall be deemed to be the youngest age at which early retirement benefits may commence or such greater age as the member has actually attained on that date, and the maximum monthly benefit in effect on such date of suspension. (Ga. L. 1955, p. 339, § 5; Ga. L. 1968, p. 441, § 1; Ga. L. 1976, p. 241, § 4; Ga. L. 1984, p. 990, § 3; Ga. L. 1991, p. 755, § 6; Ga. L. 1993, p. 476, § 3; Ga. L. 1997, p. 1376, § 1; Ga. L. 2000, p. 562, §§ 1, 2; Ga. L. 2013, p. 755, § 1/HB 238.)

**The 2013 amendment**, effective July 1, 2013, substituted "\$25.00" for "\$15.00" in the middle of the first sentence of subsection (a).

## ARTICLE 7

### MISCELLANEOUS PROVISIONS

#### 47-7-127. "Alternative investments" defined; code of ethics.

#### OPINIONS OF THE ATTORNEY GENERAL

Five percent limitation on alternative investments for the Georgia Fire-fighters' Pension Fund is to be based upon the assets' aggregate historical cost. 2012 Op. Att'y Gen. No. 12-2.

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## CHAPTER 11

### JUDGES OF THE PROBATE COURTS RETIREMENT FUND OF GEORGIA

#### Article 4

#### Sec.

##### Revenues Collected from Fines and Fees

criminal and quasi-criminal fines and forfeited bonds; duty to record and report collection; penalties.

Sec.

47-11-51. Payment to fund of a portion of

#### ARTICLE 4

### REVENUES COLLECTED FROM FINES AND FEES

#### 47-11-51. Payment to fund of a portion of criminal and quasi-criminal fines and forfeited bonds; duty to record and report collection; penalties.

(a) In every criminal and quasi-criminal case for violating state statutes or traffic laws which is before a judge of the probate court and in which case a fine is collected or a bond is forfeited, \$3.00 shall be collected by the judge, clerk of court, or other collecting authority. Such bond or fine shall be construed to include costs.

(b) The sum provided for shall be paid to the board before the payment of any cost or any claims whatsoever against such fine or forfeiture. It is made the duty of the judge of the probate court or other authority collecting the money to keep accurate records of the amount due the board so that the same may be audited or inspected at any time by any representative of the board at the direction of the board. Sums remitted to the board under this Code section shall be used as provided for elsewhere in this chapter.

(c)(1) All moneys required to be paid to the board by this Code section shall be due on the twentieth day of the month after collection. Each judge of the probate court, clerk of court, or other collecting authority shall pay such moneys to the board no later than such due date and shall submit with such moneys a sworn statement of the number and nature of transactions for which such moneys are required to be paid and the amount due. Such sworn statement shall be on a form furnished to each judge of the probate court by the board.

(2) Moneys not paid when due shall bear interest at the rate of 7 percent per annum.

(3) Moneys not paid within 60 days of the date they are due shall be delinquent. There shall be imposed on delinquent funds a specific penalty in the amount of 5 percent of the principal amount delinquent per month for each month such moneys remain delinquent; but such specific penalty shall not exceed 25 percent of the principal amount due. Such specific penalty shall be in addition to the 7 percent per annum interest charged on overdue moneys.

(4) For failure to file the written report of transactions and amount due when due, there shall be imposed a specific penalty in the amount of \$5.00 for each month such report remains overdue; but such specific penalty shall not exceed \$50.00 for failure to file any one report.

(5) By affirmative vote of all the members, the board, upon the payment of all overdue funds and interest and for good cause shown, may waive the specific penalties provided by paragraphs (3) and (4) of this subsection. (Ga. L. 1958, p. 185, § 16; Ga. L. 1959, p. 354, § 6; Ga. L. 1980, p. 1321, § 2; Ga. L. 1986, p. 1494, § 2; Ga. L. 2012, p. 677, § 1/HB 351.)

**The 2012 amendment**, effective July 1, 2012, in subsection (a), substituted the present provisions of subsection (a) for the former provisions, which read: "In every criminal and quasi-criminal case for violating state statutes or traffic laws, which case is before a judge of the probate court and in which case a fine is collected or a bond is forfeited, a sum based upon the scale set out below for each case shall be collected by the judge or other collecting authority. Such bond or fine shall be construed to include costs. Such sums shall be paid upon the following scale:

"For any fine or bond forfeiture of more than \$4.00, but not more than \$25.00 ....\$ 1.00

"For any fine or bond forfeiture of more than \$25.00, but not more than \$50.00 ....\$ 1.50

"For any fine or bond forfeiture of more than \$50.00, but not more than \$100.00 ....\$ 2.00

"For any fine or bond forfeiture of more than \$100.00 ....\$ 2.50"; in paragraph (c)(1), inserted "clerk of court" in the second sentence; and, in paragraph (c)(3), deleted the former last sentence, which read: "All funds due on or before July 10, 1980, shall be delinquent 60 days after such date."

## CHAPTER 16

## SHERIFFS' RETIREMENT FUND OF GEORGIA

## Article 6

## Sec.

Retirement Benefits and Death  
Benefits

Sec.

47-16-101. Retirement benefit options;

failure of member to select an option; effect of changes in retirement benefits and options; change of option after receipt of payments.

## ARTICLE 6

## RETIREMENT BENEFITS AND DEATH BENEFITS

**47-16-101. Retirement benefit options; failure of member to select an option; effect of changes in retirement benefits and options; change of option after receipt of payments.**

(a) At the time a member becomes eligible for retirement benefits, he or she shall choose one of three payment options for retirement benefits. The member must indicate his or her choice of payment options upon the application for retirement benefits filed with the secretary-treasurer. Upon approval of the member's application by the board, such member shall be paid retirement benefits in the form of a monthly sum of money determined in accordance with the option he or she has selected. The three payment options are as follows:

(1) Option One shall be known as a "single life annuity" and shall provide retirement benefits for the life of the member only. If the member has no more than four years of service credited to such member under this chapter, the member shall be paid a benefit of \$380.00 per month until the member's death. If the member has more than four years credited to such member under the provisions of this chapter, such member shall be paid a benefit of \$380.00 per month, plus \$95.00 per month for each additional year of service so credited to the member. If the member has additional service credit not totaling a full year, the further sum of one-twelfth of the amount paid per month for each additional year of service credit over four years shall be paid for each month of additional service so credited to the member; provided, however, that in no case shall such benefits exceed \$2,850.00 per month; provided, further, that the board of commissioners shall be authorized to increase such benefits by an amount not to exceed 3 percent per annum based on the following factors:

(A) The recommendation of the actuary of the board of commissioners;

(B) The maintenance of the actuarial soundness of the fund in accordance with the standards provided in Code Section 47-20-10 or such higher standards as may be adopted by the board; and

(C) Such other factors as the board deems relevant.

Any such increase may be uniform or may vary in accordance with the time of retirement, length of service, age, nature of the retirement, or such other factors as the board of commissioners shall determine; provided, however, that no such increase shall be made to become effective within six months of the effective date of any increase in the maximum retirement benefit granted by the General Assembly through amendment of this Code section;

(2) Option Two shall be known as a "100 percent joint life annuity" and shall provide retirement benefits for the life of either the member or his or her spouse, whichever is the survivor. The monthly amount to be paid under this option shall be based on the member's age and that of his or her spouse at the member's retirement and shall be the actuarial equivalent of the monthly retirement payment which would have been paid to the member under Option One. Actuarial equivalents shall be computed using a current and accurate mortality table adopted by the board; and

(3) Option Three shall be known as the "50 percent contingency life annuity" and shall provide for payment of a 50 percent benefit for the life of the surviving spouse. The amount to be paid under this option shall be based on the member's age and that of his or her spouse at the member's retirement and shall be computed so as to be actuarially equivalent to the monthly benefit which would have been paid to the member under Option One. Actuarial equivalents shall be computed using a current and accurate mortality table adopted by the board. When a retired member has elected Option Two or Option Three, in the event the spouse predeceases the retired member, the monthly retirement benefit payable to the retired member after the death of the spouse shall be increased to the monthly retirement benefit which the retired member would have been entitled to receive under Option One. In the event any such retired member remarries or has remarried after the death of the former spouse, the retired member may elect to begin receiving the applicable reduced retirement benefit of equivalent actuarial value and reestablish on behalf of the new spouse the same option which was applicable to the deceased former spouse, but such option on behalf of the new spouse may not be reestablished until one year after the date of remarriage or until a child of the remarried couple is born, whichever is earlier. Such actuarial equivalence shall be based on the age of the retired member and the age of the retired member's new spouse at the time of such election and shall be computed on the Mortality Table GA51,

with projection, using interest at 6 percent per annum, with a five-year age setback for females and monthly payment annuity functions.

(b)(1) Benefits payable to the spouse of a deceased member shall be payable for only so long as such spouse remains the widow or widower of such deceased member and, should such spouse remarry, any benefits payable to such spouse shall cease as of the date of remarriage.

(2) At any time after the entry of a final judgment of divorce, a retired member receiving benefits under either Option Two or Option Three may continue receiving benefits under the option so chosen for the benefit of the former spouse or may revoke the election. In the event the retired member revokes the election, the retired member shall begin receiving the monthly retirement benefit which the retired member would have been entitled to receive under Option One. Benefits paid under Option One to a retired member following such revocation shall not be retroactive. In the event that the retired member remarries after divorce from the former spouse and the member elected to revoke Option Two or Option Three as provided in this paragraph, the retired member may elect to begin receiving reduced monthly retirement benefits of actuarial equivalence under either Option Two or Option Three. Such actuarial equivalence shall be based on the age of the retired member and the age of the retired member's new spouse at the time of such election and shall be computed on the Mortality Table GA5 1, with projection, using interest at 6 percent per annum, with a five-year age setback for females and monthly payment annuity functions.

(c) Any provisions of this chapter to the contrary notwithstanding, \$20.00 shall be deducted from the monthly retirement benefits of the member or the monthly retirement benefits under Option Two or Three to the spouse of the member when the member has been credited with any period of service under this chapter which was performed prior to January 1, 1961, and for which dues shall not have been paid by the member, until a total sum of \$20.00 for every month of service prior to January 1, 1961, so credited to the member shall have been withheld, or until dues have been paid or withheld for a maximum of 25 years, or until the death of the member and his or her spouse who is receiving benefits, whichever may occur first.

(d) In the event any member with a spouse then living is unable to choose one of the three option payments, to complete and file an application for retirement benefits with the secretary-treasurer, or to obtain the approval of the board because of his or her death, mental incompetency, or other providential cause, but the member is otherwise eligible to receive retirement benefits except for his or her having been

prevented, Option Two shall be effective, and retirement benefits shall be paid in accordance with that option.

(e) The options under this Code section and the increase in the amounts to be paid as retirement benefits pursuant to said options shall become effective and apply from and after May 1, 1979. Those members and persons already receiving retirement benefits which were computed and determined at a time when the options were not available shall not be afforded an opportunity to select an option but shall have their retirement benefits recomputed and determined in accordance with the provisions of Option One, and the increase in benefits shall be paid to such members or persons from and after May 1, 1979. For those members or persons eligible to receive retirement benefits from and after May 1, 1979, their service shall be computed and determined in accordance with the increased retirement benefits in this Code section in accordance with the member's option selected in accordance with the provisions of this Code section and according to the number of years of creditable service credited to such member or person under this Code section, and such member shall be paid the retirement benefits so determined from and after May 1, 1979. For those members or persons already receiving retirement benefits, such members or persons shall be entitled to have their retirement benefits recomputed and determined in accordance with this Code section, and the increase in benefits according to their years of creditable service shall be paid to such members and persons from and after May 1, 1979.

(f) No member shall be allowed to change the retirement options provided in this Code section subsequent to the time that such member receives the first payment under the retirement option originally selected by such member. (Ga. L. 1963, p. 630, § 18; Ga. L. 1972, p. 705, § 4; Ga. L. 1973, p. 1414, § 1; Ga. L. 1974, p. 1194, § 1; Ga. L. 1976, p. 332, §§ 1, 2; Ga. L. 1977, p. 1291, § 1; Ga. L. 1978, p. 1690, §§ 1, 2; Ga. L. 1979, p. 994, §§ 1, 2; Ga. L. 1981, p. 1853, § 1; Ga. L. 1981, p. 1889, § 2; Ga. L. 1983, p. 1185, § 5; Ga. L. 1985, p. 1348, § 1; Ga. L. 1986, p. 604, § 2; Ga. L. 1988, p. 1566, §§ 2, 3; Ga. L. 1990, p. 553, § 1; Ga. L. 1991, p. 130, § 1; Ga. L. 1993, p. 608, § 2; Ga. L. 1994, p. 92, § 1; Ga. L. 1994, p. 325, § 4; Ga. L. 1995, p. 789, § 1; Ga. L. 1996, p. 375, § 1; Ga. L. 1998, p. 155, § 1; Ga. L. 2000, p. 1167, § 2; Ga. L. 2010, p. 1207, §§ 64, 66/SB 436; Ga. L. 2012, p. 675, § 1/HB 337.)

**The 2012 amendment**, effective July 1, 2012, designated the existing provi-

sions of subsection (b) as paragraph (b)(1); and added paragraph (b)(2).

## CHAPTER 17

## PEACE OFFICERS' ANNUITY AND BENEFIT FUND

## Article 2

Sec.

## Administration and Management of the Assets of the Fund

Sec.

47-17-27. Board authorized to employ hearing officer; powers and duties of hearing officer; appeal.

fits; periodic medical examination; termination of disability benefits; application; hearings.

## Article 6

## Retirement Benefits and Disability Benefits

47-17-81. Eligibility for disability bene-

## Article 7

## Miscellaneous Provisions

47-17-105. Member's obligation to notify board of employment change.

## OPINIONS OF THE ATTORNEY GENERAL

**Eligibility of investigators employed by Georgia Forestry Commission and Department of Agriculture.** — Investigators at issue who are employed by the Georgia Forestry Commission and by the Georgia Department of Agriculture do not meet the definition of peace officer in O.C.G.A. 47-17-1(5)(A) as that definition has been interpreted by the Georgia Supreme Court and that the investigators therefore are not eligible for membership in the Peace Officers Annuity Board Fund. Although it is clear that

these investigators perform important functions for the citizens of this State, the investigators' specific missions do not meet the criteria established by the General Assembly, as interpreted by the Georgia Supreme Court, for membership in this supplemental retirement fund. This conclusion, of course, in no way limits their status as members of the Employees Retirement System of Georgia, the primary pension fund for state employees. 2010 Op. Att'y Gen. No. 10-4.

## ARTICLE 2

## ADMINISTRATION AND MANAGEMENT OF THE ASSETS OF THE FUND

**47-17-27. Board authorized to employ hearing officer; powers and duties of hearing officer; appeal.**

(a) The board is authorized and empowered to appoint and compensate a hearing officer for the purpose of holding hearings, compiling evidence and information, and submitting evidence, information, and recommendations to the board in any contested case.

(b) The hearing officer shall have the authority to do the following in connection with any hearing: administer oaths and affirmations; sign and issue subpoenas; rule upon offers of proof; regulate the course of the

hearing, set the time and place for the hearing or any continued hearings, and fix the time for filing any briefs; provide for the taking of testimony by deposition or interrogatory; and reprimand or exclude from the hearing any person for any indecorous or improper conduct committed in the presence of the hearing officer. When a subpoena issued by the hearing officer is disobeyed, any interested party may apply to the superior court of the county where the hearing is being held for an order requiring obedience. Failure to comply with such order shall be cause for punishment as for contempt of court. Any applicant for disability benefits shall have the right to be represented by counsel before the hearing officer.

(c) With respect to all hearings before the hearing officer:

(1) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. The rules of evidence as applied in the trial of civil nonjury cases in the superior courts shall be followed. Evidence not admissible under such rules of evidence may be admitted if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. The hearing officer shall give effect to the rules of privilege recognized by law; and

(2) Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. At the discretion of the hearing officer, the original shall be compared with the copy or excerpt.

(d) The hearing officer, within 30 days from the close of the evidence or, if necessary, a longer period of time approved by the board, shall certify the entire record from the hearing to the board, together with his or her recommendation on the application. On review of the entire record from the hearing officer, the board shall have all the powers it would have in presiding at the reception of the evidence. In its discretion, the board may take additional testimony or remand the matter to the hearing officer for such purpose. The recommendation of the hearing officer to the board shall be made a part of the record before the board.

(e) As a part of its decision subsequent to any hearing, the board shall include findings of fact and conclusions of law, separately stated, and the effective date of the decision. The decision of the board shall be mailed to the parties as soon after the rendition of the decision as is practicable.

(f) Any party who is adversely affected by any final decision of the board may seek judicial review of the final decision of the board in the Superior Court of Spalding County. Proceedings for review shall be instituted by filing a petition with the court within 30 days after the decision is rendered. A copy of the petition shall be served upon the

board. The petition shall state the nature of the petitioner's interest, the facts showing that the petitioner is aggrieved by the decision of the hearing officer, and the grounds upon which the petitioner contends the decision should be reversed or remanded. The petition may be amended with leave of the court.

(g) Within 30 days after the service of the petition or within further time allowed by the court, the hearing officer shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review. By agreement of the petitioner, the record may be shortened. The court may require or permit subsequent corrections or additions to the record.

(h) The filing of the petition shall in no manner stay the enforcement of the decision of the hearing officer.

(i) The review shall be conducted by the court without a jury and shall be confined to the record. The court shall not substitute its judgment for that of the hearing officer as to the weight of the evidence on questions of fact. The court may affirm the decision of the hearing officer or remand the case for further proceedings. The court may reverse the decision of the hearing officer if substantial rights of the petitioner have been prejudiced because the findings, inferences, conclusions, or decisions of the hearing officer are:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority of the hearing officer;
- (3) Made upon unlawful procedure;
- (4) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (5) Arbitrary or capricious.

(j) A petitioner who is aggrieved by an order of the court in a proceeding authorized under this Code section may appeal to the Supreme Court of Georgia or the Court of Appeals of Georgia in accordance with Title 5. (Code 1981, § 47-17-27, enacted by Ga. L. 2012, p. 769, § 1/HB 928.)

**Effective date.** — This Code section became effective July 1, 2012.

## **ARTICLE 6**

### **RETIREMENT BENEFITS AND DISABILITY BENEFITS**

#### **47-17-81. Eligibility for disability benefits; periodic medical examination; termination of disability benefits; application; hearings.**

(a) Any dues-paying member who became a member prior to July 1, 1993, who is rendered totally and permanently disabled by disease or injury so as to be unable to perform substantially all of the duties of the position to which the member was regularly assigned when the disability originated or so as to be unable to engage in any occupation or gainful employment for which the member is reasonably suited by virtue of the member's background, training, education, and experience shall be entitled to disability benefits of \$257.00 per month for life or until the member's disability ceases, provided that the member makes application to the board for disability benefits within 12 months of becoming totally and permanently disabled.

(b) The disability benefits provided under this Code section shall be payable upon the event of disability as provided in subsection (a) of this Code section regardless of the cause of the disability and shall be payable when the disability is a result of any mental or physical injury or disease, whether caused by reason of the peace officer's employment or not, provided that no benefits shall be payable under this Code section for any disability resulting from the chronic and excessive consumption of alcoholic beverages, addiction to drugs, the use of which is prohibited in this state by law, engagement by the member in any criminal act, willful misconduct of the member, or injury sustained by the member while serving in the armed forces of any country or while on active duty in the National Guard or other armed forces reserve force.

(c) Any other provision of law to the contrary notwithstanding, any member who is receiving disability benefits pursuant to this Code section on June 30, 1990, and who had at least 20 years of creditable service at the time such member first became eligible for such disability benefits shall receive the same benefits as a member who retires at age 55 or older with 20 years of creditable service under the provisions of Code Section 47-17-80. For each year of service above 20 years but not more than 30 years which such member had when first becoming eligible to receive disability benefits, the benefits shall be the same as those provided for the same number of years of creditable service under the provisions of Code Section 47-17-80. The benefits of such members who are receiving disability benefits pursuant to this Code section on June 30, 1990, shall be recomputed and the increased benefits shall be

paid to such members beginning July 1, 1990. Any member who first becomes eligible to receive disability benefits on or after July 1, 1990, who has the required years of creditable service as provided in this subsection shall have disability benefits computed and paid in the same manner as provided in this subsection.

(d) The amount of disability benefits in this Code section shall apply to those members who have retired on disability prior to July 1, 1990, as well as to those members who retire on disability on or after that date. The service of each such member who retired prior to July 1, 1990, shall be recomputed, and the benefits provided under this Code section shall be paid to such member in the future beginning July 1, 1990.

(e) Once each year during the first five years following the commencement of disability benefits under this Code section, and once in every three-year period thereafter, the board may require a disability beneficiary who has not yet attained 65 years of age to undergo a medical examination, such examination to be made at his or her place of residence, or other place mutually agreed upon, by physicians designated by the board. The disability benefits recipient may himself or herself request such an examination. The designated physicians shall report to the board, following each such examination, the current status and condition of the recipient's disability.

(f) A disabled member's disability benefits shall cease:

(1) Upon his or her return to gainful employment with the employer for which he or she worked at the time his or her disability originated;

(2) If he or she refuses to submit to any medical examination requested under this Code section, in which case the benefits shall remain discontinued until the member's withdrawal of such refusal and submission to the requested medical examination; and, if his or her refusal continues for one year, all his or her rights in and to disability benefits may be revoked by the board;

(3) If the board determines on the basis of any medical examination that the member has sufficiently recovered from his or her disability so as to again be able to perform substantially all of the duties of the position to which he or she was regularly assigned when the disability originated, or so as to be able to engage in an occupation or gainful employment for which he or she is reasonably suited by virtue of his or her background, training, education, and experience;

(4) If the member does in fact obtain gainful employment compensating him or her at a level equal to or greater than the current compensation for the position he or she occupied at the time his or her disability originated; or

(5) When he or she dies.

(g) The board shall prescribe and furnish a form and procedure for the application for disability benefits. Applications shall contain such information as the board shall require. Upon the receipt of an application, the board may pass upon and decide whether to grant or deny the application on the basis of the submitted information or may refer the application to its duly appointed hearing officer for a recommendation. Any applicant for disability benefits shall have the right to request the board to refer his or her application to the hearing officer for a recommendation. In the consideration of any application for disability benefits, the receipt of disability benefits or payments by the applicant under the federal Social Security Act shall be deemed sufficient for eligibility for disability benefits under this Code section.

(h) Any other provision of this Code section to the contrary notwithstanding, no person who becomes a member or again becomes a member of this fund on or after July 1, 1993, shall be entitled to any benefit provided for in this Code section. (Ga. L. 1950, p. 50, § 12; Ga. L. 1951, p. 472, § 4; Ga. L. 1952, p. 81, § 2; Ga. L. 1956, p. 280, § 11; Ga. L. 1958, p. 341, § 7; Ga. L. 1959, p. 330, § 3; Ga. L. 1962, p. 39, § 6; Ga. L. 1963, p. 386, § 1; Ga. L. 1976, p. 580, § 1; Ga. L. 1977, p. 682, § 1; Ga. L. 1979, p. 430, §§ 4, 5; Ga. L. 1981, p. 454, §§ 4, 5; Ga. L. 1982, p. 3, § 47; Ga. L. 1982, p. 2367, §§ 1, 2; Ga. L. 1986, p. 30, § 1; Ga. L. 1986, p. 609, § 2; Ga. L. 1988, p. 999, § 2; Ga. L. 1990, p. 482, § 2; Ga. L. 1993, p. 1000, §§ 3, 4; Ga. L. 2012, p. 769, § 2/HB 928.)

**The 2012 amendment**, effective July 1, 2012, inserted "or her" and inserted "or she" throughout this Code section; inserted "or herself" in the second sentence of subsection (e); deleted subsections (h)

through (q), relating to authority and duties of a hearing officer; and redesignated former subsection (r) as present subsection (h).

## ARTICLE 7

### MISCELLANEOUS PROVISIONS

#### **47-17-105. Member's obligation to notify board of employment change.**

If at any time a member of the fund undergoes a change of employment to a position that does not qualify the member as a "peace officer" as such term is defined in this chapter, or if his or her job description changes in a manner that is inconsistent with such definition, such member shall have an affirmative duty to notify the board of such change immediately. The board is not authorized to accept membership dues from any such member or to pay benefits calculated on service after such a change of employment or job description. (Code 1981, § 47-17-105, enacted by Ga. L. 2012, p. 809, § 1/HB 987.)

**Effective date.** — This Code section became effective July 1, 2012.

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## CHAPTER 18

# SOCIAL SECURITY COVERAGE FOR EMPLOYEES OF THE STATE AND POLITICAL SUBDIVISIONS OF THE STATE

### Article 1 General Provisions

Sec.

47-18-2. Definitions.

## ARTICLE 1 GENERAL PROVISIONS

### 47-18-2. Definitions.

As used in this chapter, the term:

(1) “Employee” includes an officer of a political subdivision of the state. Any individual compensated for services as a school bus driver, either through a contractual relationship or otherwise, is deemed to be an employee of the governing board of education for which such services are performed.

(2) “Employee tax” means the tax imposed by Section 1400 of the federal Internal Revenue Code of 1939 and Section 3101 of the federal Internal Revenue Code.

(3) “Employment” means any service performed by an employee in the employ of the state or any political subdivision of the state, for such employer, except:

(A) Service which in the absence of an agreement entered into under this chapter would constitute “employment,” as defined in the Social Security Act; or

(B) Service which under the Social Security Act may not be included in an agreement between the state and the secretary of health and human services entered into under this chapter. Service which under the Social Security Act may be included in an agreement only upon certification by the Governor in accordance with Section 218(d)(3) of the Social Security Act shall be included in the term “employment” if and when the Governor issues, with

respect to such service, a certificate to the secretary of health and human services, pursuant to subsection (b) of Code Section 47-18-42.

(4) "Federal Insurance Contributions Act" means Subchapter A of Chapter 9 of the federal Internal Revenue Code of 1939 and Subchapters A and B of Chapter 21 of the federal Internal Revenue Code, as such codes have been and may from time to time be amended.

(5) "Political subdivision" means counties and incorporated municipalities and includes an instrumentality of: (A) the state, (B) one or more political subdivisions of the state, or (C) the state and one or more of its political subdivisions. Such term also includes the Board of Regents of the University System of Georgia, the Federal-State Cooperative Inspection Service of the State of Georgia, the Board of Trustees of Georgia Military College, and the Georgia Municipal Association.

(6) "Secretary of health and human services" includes any individual to whom the secretary of health and human services has delegated any functions under the Social Security Act, with respect to coverage under such act, of employees of states and their political subdivisions, and with respect to any action taken prior to April 11, 1953, includes the federal security administrator and any individual to whom such administrator had delegated any such functions.

(7) "Social Security Act" means the act of Congress approved August 14, 1935, Chapter 531, 49 Stat. 620, officially cited as the "Social Security Act," as such act has been and may from time to time be amended. Such term shall also include regulations and requirements issued pursuant to that act.

(8) "State agency" means the Employees' Retirement System of Georgia.

(9) "Wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include that part of such remuneration which, even if it were for "employment" within the meaning of the Federal Insurance Contributions Act, would not constitute "wages" within the meaning of that act. (Ga. L. 1953, Nov.-Dec. Sess., p. 294, § 2; Ga. L. 1956, p. 75, § 2; Ga. L. 1958, p. 198, § 1; Ga. L. 1959, p. 445, § 1; Ga. L. 1966, p. 150, § 1; Ga. L. 1987, p. 191, § 9; Ga. L. 2010, p. 1248, § 1/HB 997; Ga. L. 2012, p. 413, § 10/HB 805.)

**The 2012 amendment**, effective July 1, 2012, substituted "Employees' Retirement System of Georgia" for "State Personnel Administration" in paragraph (8).

**Editor's notes.** — Ga. L. 2012, p. 413, § 1/HB 805, not codified by the General Assembly, provides that: "The purpose of this Act is to make conforming amend-

ments and correct references in Title 47 of the Official Code of Georgia Annotated, relating to retirement and pensions, relative to the abolition of the State Personnel Administration and the transfer of certain functions of such agency to the Department of Administrative Services as provided by a separate Act." The separate Act referred to is Ga. L. 2012, p. 446/HB 642, which became effective July 1, 2012, and which provides for the abolition of the State Personnel Administration and the transfer of functions.

Ga. L. 2012, p. 413, § 13/HB 805, not

codified by the General Assembly, provides that: "This Act shall become effective on July 1, 2012, only if an Act abolishing the State Personnel Administration and providing for the transfer of certain functions of such agency to the Department of Administrative Services is enacted and becomes effective on that same date; otherwise, this Act shall not become effective and shall stand repealed on July 1, 2012." Ga. L. 2012, p. 446/HB 642, effective July 1, 2012, provides for the abolition of the State Personnel Administration and the transfer of functions.

## CHAPTER 19

### STATE EMPLOYEES' ASSURANCE DEPARTMENT

Sec.	Sec.
47-19-1. Creation of the State Employees' Assurance Department; management of the department; membership of the board of directors.	47-19-9. Application of the state system of personnel administration to employees of the department; payment of share of costs.

#### 47-19-1. Creation of the State Employees' Assurance Department; management of the department; membership of the board of directors.

There is created a department of the state government to be known as the State Employees' Assurance Department. The department shall be managed by a board of directors consisting of the state treasurer, the Commissioner of Labor, the state auditor, the commissioner of administrative services, and two members to be appointed by the Governor. (Ga. L. 1963, p. 521, § 1; Ga. L. 1986, p. 999, § 2; Ga. L. 1991, p. 274, § 3; Ga. L. 1993, p. 1402, § 18; Ga. L. 2010, p. 863, § 3/SB 296; Ga. L. 2012, p. 413, § 11/HB 805.)

**The 2012 amendment**, effective July 1, 2012, substituted "commissioner of administrative services" for "commissioner of personnel administration" in this Code section.

**Editor's notes.** — Ga. L. 2012, p. 413, § 1/HB 805, not codified by the General Assembly, provides that: "The purpose of this Act is to make conforming amendments and correct references in Title 47 of

the Official Code of Georgia Annotated, relating to retirement and pensions, relative to the abolition of the State Personnel Administration and the transfer of certain functions of such agency to the Department of Administrative Services as provided by a separate Act." The separate Act referred to is Ga. L. 2012, p. 446/HB 642, which became effective July 1, 2012, and which provides for the abolition of the

State Personnel Administration and the transfer of functions.

Ga. L. 2012, p. 413, § 13/HB 805, not codified by the General Assembly, provides that: "This Act shall become effective on July 1, 2012, only if an Act abolishing the State Personnel Administration and providing for the transfer of certain functions of such agency to the

Department of Administrative Services is enacted and becomes effective on that same date; otherwise, this Act shall not become effective and shall stand repealed on July 1, 2012." Ga. L. 2012, p. 446/HB 642, effective July 1, 2012, provides for the abolition of the State Personnel Administration and the transfer of functions.

#### **47-19-9. Application of the state system of personnel administration to employees of the department; payment of share of costs.**

(a) The employees of the department shall be governed by such rules of position classification, appointment, promotion, demotion, dismissal, transfer, qualification, compensation, seniority, privileges, tenure, and other employment standards as may now or hereafter be established under Chapter 20 of Title 45.

(b) The department shall pay its share of the administrative costs of operating the state system of personnel administration, in the manner prescribed in Code Section 45-20-4. (Ga. L. 1963, p. 521, §§ 4, 5; Ga. L. 1982, p. 3, § 47; Ga. L. 1983, p. 3, § 36; Ga. L. 2009, p. 752, § 1/SB 98; Ga. L. 2012, p. 413, § 12/HB 805.)

**The 2012 amendment**, effective July 1, 2012, substituted the present provisions of subsection (b) for the former provisions, which read: "The department shall pay its pro rata share of the administrative costs of operating the State Personnel Administration, in the manner prescribed in paragraph (6) of subsection (b) of Code Section 45-20-4."

**Editor's notes.** — Ga. L. 2012, p. 413, § 1/HB 805, not codified by the General Assembly, provides that: "The purpose of this Act is to make conforming amendments and correct references in Title 47 of the Official Code of Georgia Annotated, relating to retirement and pensions, relative to the abolition of the State Personnel Administration and the transfer of certain functions of such agency to the Department of Administrative Services as provided by a separate Act." The separate Act

referred to is Ga. L. 2012, p. 446/HB 642, which became effective July 1, 2012, and which provides for the abolition of the State Personnel Administration and the transfer of functions.

Ga. L. 2012, p. 413, § 13/HB 805, not codified by the General Assembly, provides that: "This Act shall become effective on July 1, 2012, only if an Act abolishing the State Personnel Administration and providing for the transfer of certain functions of such agency to the Department of Administrative Services is enacted and becomes effective on that same date; otherwise, this Act shall not become effective and shall stand repealed on July 1, 2012." Ga. L. 2012, p. 446/HB 642, effective July 1, 2012, provides for the abolition of the State Personnel Administration and the transfer of functions.

## CHAPTER 20

### PUBLIC RETIREMENT SYSTEMS STANDARDS

<b>Article 1</b> <b>General Provisions</b>  Sec. 47-20-5. Common law duties of trustees applicable.	<b>Sec.</b> 47-20-83. Certificated or uncertificated forms of investment; real estate investments.  47-20-87. Definitions; eligible large retirement systems authorized to invest in certain alternative investments; applicability.
<b>Article 7</b> <b>Public Retirement Systems Investment Authority Law</b>  47-20-82. Investing funds; eligibility; investment limitation.	

### ARTICLE 1

#### GENERAL PROVISIONS

##### **47-20-5. Common law duties of trustees applicable.**

The duties of the boards of trustees of public retirement systems or pension plans contained in this title are in addition to, and not in limitation of, the common law duties of the trustee found in Title 53 except to the extent inconsistent with those within this title. (Code 1981, § 47-20-5, enacted by Ga. L. 2013, p. 682, § 1/SB 143.)

**Effective date.** — This Code section became effective July 1, 2013.

### ARTICLE 7

#### PUBLIC RETIREMENT SYSTEMS INVESTMENT AUTHORITY LAW

##### **47-20-82. Investing funds; eligibility; investment limitation.**

(a) Funds shall invest in or lend their assets on the security of, and shall hold as invested assets, only eligible investments as prescribed in this article.

(b) Eligibility of an investment shall be determined as of the date of its making or acquisition.

(c) Any investment limitation based upon the amount of the fund's assets shall relate to such assets on the basis of the assets' aggregate historical cost. For purposes of any investment made in alternative investments pursuant to Code Section 47-7-127 or 47-20-87, aggregate

historical cost shall include all contractually committed, unpaid amounts. (Code 1981, § 47-20-82, enacted by Ga. L. 2000, p. 2, § 2; Ga. L. 2012, p. 211, § 2/SB 402.)

**The 2012 amendment**, effective July 1, 2012, added the last sentence to subsection (c).

**Editor's notes.** — Ga. L. 2012, p. 211, § 1/SB 402, not codified by the General

Assembly, provides that: "This Act shall be known and may be cited as the 'Employees' Retirement System of Georgia Enhanced Investment Authority Act.'".

#### **47-20-83. Certificated or uncertificated forms of investment; real estate investments.**

(a) Subject to limitations stated in this article, funds may invest in the following in certificated or uncertificated form:

(1) Corporations or obligations of corporations organized under the laws of this state or any other state or under the laws of Canada, but only if the corporation has a market capitalization equivalent to \$100 million; provided, however, that except as provided in Code Section 47-20-84, no fund shall invest in corporations or in obligations of corporations organized in a country other than the United States or Canada; provided, further, that such obligation shall be listed as investment grade by a nationally recognized rating agency. For purposes of this paragraph, a corporation organized under the laws of a country other than the United States or Canada shall be deemed to be organized under the laws of this state or another state unless it is a private foreign issuer within the meaning of United States Securities and Exchange Commission Rule 3b-4, 17 C.F.R. Section 240.3b-4, as such appears on July 1, 2007; this will not include any investment with any corporation that is included in the terrorism sanctions issued by the Office of Foreign Assets Control of the United States Department of the Treasury pursuant to Executive Order 13224 signed by the President of the United States on September 23, 2001;

(2) Repurchase and reverse repurchase agreements for direct obligations of the United States government and for obligations unconditionally guaranteed by agencies of the United States government and for investments eligible under paragraph (1) of this subsection;

(3) Cash assets or deposits in checking or savings accounts under certificates of deposit or in other form in banks and trust companies and in savings accounts, certificates of deposit, or similar certificates or evidences of deposits in savings and loan associations and building and loan associations which have qualified for the insurance protection afforded by the Federal Deposit Insurance Corporation;

(4) Bonds, notes, warrants, and other evidence of indebtedness which are direct obligations of the government of the United States of

America or for which the full faith and credit of the government of the United States of America is pledged for the payment of principal and interest;

(5) Loans guaranteed as to principal and interest by the government of the United States of America, or by any agency or instrumentality of the government of the United States of America, to the extent of such guaranty;

(6) Taxable bonds, notes, warrants, and other securities not in default which are the direct obligations of any state of the United States or of the District of Columbia, or of the government of Canada or any province of Canada, or for which the full faith and credit of such state, district, government, or province has been pledged for the payment of principal and interest;

(7) Bonds, notes, warrants, and other securities not in default which are the direct obligations of the government of any foreign country which the International Monetary Fund lists as an industrialized country and for which the full faith and credit of such government has been pledged for the payment of principal and interest, provided such securities are listed as investment grade by a nationally recognized rating agency;

(8) Bonds, debentures, or other securities issued or insured or guaranteed by any agency, authority, unit, or corporate body created by the government of the United States of America whether or not such obligations are guaranteed by the United States;

(9) Collateralized mortgage obligations that are listed as investment grade by a nationally recognized rating agency;

(10) Obligations issued, assumed, or guaranteed by the International Bank for Reconstruction and Development or the International Financial Corporation;

(11) In addition to those investments eligible under paragraph (1) of this subsection, bonds, debentures, notes, and other evidences of indebtedness issued, assumed, or guaranteed by any solvent institution existing under the laws of the United States of America or of Canada, or any state or province thereof, which are not in default as to principal or interest and which are secured by collateral worth at least 50 percent more than the par value of the entire issue of such obligations, but only if not more than one-third of the total value of the required collateral consists of common stocks;

(12) In addition to those investments eligible under paragraph (1) of this subsection, secured and unsecured obligations of issuers described in paragraph (11) of this subsection other than the obligations described in paragraph (11) of this subsection, bearing interest

at a fixed rate, with mandatory principal and interest due at specified times, if the net earnings of the issuing, assuming, or guaranteeing institution available for its fixed charges for a period of five fiscal years next preceding the date of acquisition by the fund have averaged per year not less than one and one-half times its average annual fixed charges applicable to such period and if during either of the last two years of the period of such net earnings have been not less than one and one-half times its fixed charges for the year; provided, however, that any such obligation shall be listed as investment grade by a nationally recognized rating agency;

(13) In addition to those investments eligible under paragraph (1) of this subsection, equipment trust obligations or certificates adequately secured and evidencing an interest in transportation equipment, wholly or in part within the United States of America, and the right to receive determinated portions of rental, purchase, or other fixed obligatory payments for the use or purchase of the transportation equipment;

(14) Loans that are secured by pledge or securities eligible for investment under this article;

(15) Purchase money mortgages or like securities received upon the sale or exchange of real property acquired;

(16) In addition to those investments eligible under paragraph (1) of this subsection, a mortgage or a mortgage participation, pass-through, conventional pass-through, trust certificate, or other similar security which represents an undivided, beneficial interest in a pool of loans secured by first mortgages, deeds of trust, or deeds to secure debt upon fee simple, unencumbered, improved, or income-producing real property located in the United States or Canada, which is improved with a residential building or condominium unit or buildings designed for occupancy by not more than four families, including leasehold estates in such real estate if such first mortgages, deeds of trust, or deeds to secure debt are fully guaranteed or insured by the Federal Housing Administration, the United States Department of Veterans Affairs, the Farmers Home Administration, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, the Federal National Mortgage Association, or any similar governmental entity or instrumentality;

(17) Land and buildings on such land used or acquired for use as a fund's office for the convenient transaction of its own business; provided, however, that portions of such buildings not used for its own business may be rented by the fund to others; provided, further, that the amount invested by a fund in office property shall not exceed 10 percent of the retirement system assets;

(18) Real property acquired in satisfaction in whole or in part of loans, mortgages, liens, judgments, decrees, or debts previously owing to the fund in the course of its business;

(19) Real property acquired in part payment of the consideration on the sale of other real property owned by the fund if such transaction effects a net reduction in the fund's investment in real estate;

(20) Real property acquired by gift or devise, or through merger or consolidation with another fund;

(21) Additional real property and equipment incident to real property if necessary or convenient for the enhancement of the marketability or sale value of real property previously acquired or held by the fund under paragraphs (18), (19), and (20) of this subsection; and

(22) Business entities organized under the laws of this state or any other state or under the laws of Canada, but only if the business entity has a minimum market capitalization equivalent to \$100 million and if the business entity has elected to be taxed and continues to qualify as a real estate investment trust under Section 856 through Section 860 of the federal Internal Revenue Code, 26 U.S.C. Section 856 through Section 860; provided, however, that except as provided in Code Section 47-20-84, no fund shall invest in business entities organized in a country other than the United States or Canada.

(b) Notwithstanding the provisions of subsection (a) of this Code section, the Georgia Municipal Employees Benefit System and any association of like political subdivisions which contracts with its members for the pooling of assets may invest up to 10 percent of the total assets of its fund in real estate; provided, however, that in the event the fund's assets decrease in value, the association shall be entitled to retain all real estate investments if owned prior to the reduction in value of assets; provided, further, that any such association shall be entitled to retain all real estate assets it owned on July 1, 1999, without regard to the limitation imposed by this subsection. (Code 1981, § 47-20-83, enacted by Ga. L. 2000, p. 2, § 2; Ga. L. 2001, p. 21, § 1; Ga. L. 2007, p. 115, §§ 1, 2/HB 318; Ga. L. 2009, p. 368, § 1/SB 48; Ga. L. 2013, p. 612, § 1/HB 71.)

**The 2013 amendment**, effective July 1, 2013, substituted "10 percent" for "5 percent" near the middle of subsection (b).

**47-20-87. Definitions; eligible large retirement systems authorized to invest in certain alternative investments; applicability.**

(a) As used in this Code section, the term:

(1) "Alternative investments" means the following investments:

(A) Privately placed investment pools, including, without limitation, private investment funds, such as:

- (i) Leveraged buyout funds;
- (ii) Mezzanine funds;
- (iii) Workout funds;
- (iv) Debt funds;
- (v) Venture capital funds;
- (vi) Merchant banking funds; and
- (vii) Funds of funds and secondary funds

that include investments in privately placed investment pools described in this subparagraph, in each case whether structured as a partnership, limited liability company, trust, corporation, joint venture, or other entity or investment vehicle of any type; organized or operating in one of the states or territories of the United States or outside the United States; such pool will invest in the United States or outside the United States or any combination thereof; or such pool makes investments of the type described in subparagraph (B) of this paragraph or other investments of any type or any combination thereof;

(B) Private placements and other private investments, including without limitation:

- (i) Leveraged buyouts;
- (ii) Venture capital investment;
- (iii) Equity investments, including, without limitation, preferred and common stock;
- (iv) Warrants;
- (v) Options;
- (vi) Private investments in public securities;
- (vii) Recapitalizations;
- (viii) Privatizations;

- (ix) Mezzanine debt investments;
- (x) Distressed debt and equity investments, including, without limitation, cases in which the investor may take control of the issuer;
- (xi) Other debt investments, whether secured or unsecured, senior or subordinated, recourse or nonrecourse, convertible, or otherwise;
- (xii) Convertible securities;
- (xiii) Receivables;
- (xiv) Interests, as such term is referred to in 11 U.S.C. Sections 501 and 502;
- (xv) Claims, as such term is defined in 11 U.S.C. Section 101(5);
- (xvi) Debt and equity derivative instruments of all types; and
- (xvii) All other debt and equity private placements of all types, in each case whether issued by a partnership, limited liability company, trust, corporation, joint venture, or other entity or vehicle of any type or whether the issuer is organized or does business in one of the states or territories of the United States or outside the United States; and

(C) Any distribution in kind received by an eligible large retirement system in connection with any investment described in subparagraphs (A) and (B) of this paragraph.

(2) "Eligible large retirement system" means a large retirement system as defined in subsection (a) of Code Section 47-20-84; provided, however, that such term shall not include the Teachers Retirement System of Georgia.

(b) In addition to the eligible investments authorized by Code Section 47-20-82, and without applicability of any restrictions set forth in Code Sections 47-20-83 and 47-20-84, an eligible large retirement system is authorized to invest in alternative investments in accordance with the provisions of this Code section. Further, when provisions of Code Section 47-20-83 or 47-20-84 or any provisions of this article other than this Code section limit a particular form of investment to a certain percentage of retirement system assets, the denominator will include alternative investments with all other investments, but the numerator for any such calculation shall not include any alternative investments, even if any such alternative investment is of a like kind as the investments that are included in the numerator.

(c) An alternative investment shall not exceed in any case 20 percent of the aggregate amount of:

(1) The capital to be invested in the applicable private pool, including all parallel pools and other related investment vehicles established as part of the investment program of the applicable private pool; and

(2) The securities being issued in the applicable private placement, in each case determined at the time such alternative investment is initially either made or committed to be made, as applicable, but taking into consideration any investments that have previously been or are concurrently being made or committed to be made.

Each alternative investment by an eligible large retirement system shall have previously been or shall be concurrently made or committed to be made by at least four other investors not affiliated with the issuer. At the time of initial investment, such investors shall not include any trustee of the eligible large retirement system making the investment or any public official as defined in paragraph (9) of Code Section 45-10-20. Such four other investors shall be investing on substantially the same terms and conditions as those applicable to the investment by the eligible large retirement system to the extent such other investors are similarly situated with the eligible large retirement system. Alternative investments shall only be made in private pools and issuers that have at least \$100 million in assets, including committed capital, at the time the investment is initially made or committed to be made by an eligible large retirement system.

(d) Alternative investments by an eligible large retirement system shall not in the aggregate exceed 5 percent of the eligible large retirement system assets at any time. The board of trustees of an eligible large retirement system shall have the discretion to designate whether any investment that is permitted to be made as an alternative investment pursuant to this Code section and that is also permitted to be made as an investment pursuant to Code Section 47-20-83 shall be treated for purposes of the 5 percent limitation and otherwise as an alternative investment made pursuant to this Code section or as an investment made pursuant to Code Section 47-20-83. If the eligible large retirement system is not in compliance with the limitations imposed by this subsection, it shall make a good faith effort to come into compliance within two years and in any event as soon as practicable thereafter; provided, however, that during any period of noncompliance, the eligible large retirement system shall not increase the percentage of its assets committed to be invested in alternative investments but shall be permitted during such period to continue to make investments as required by the then existing commitments of the eligible large retirement system to alternative investments made before the period of noncompliance.

(e) The provisions of this subsection shall apply only to the Employees' Retirement System of Georgia. New commitments to alternative

investments shall not in the aggregate exceed 1 percent of the retirement system assets in any calendar year until the first occurrence that 4 1/2 percent of the retirement system assets are invested in alternative investments, at which time there shall be no limit on the percentage of commitments that may be made in any calendar year, subject to compliance with the other provisions of this Code section.

(f)(1) For purposes of this subsection, the term "information" shall include, without limitation, preinvestment and postinvestment diligence information, including reviews and analyses prepared or provided by the issuer of a potential or actual alternative investment or prepared by or for an eligible large retirement system or otherwise relating to a potential or actual alternative investment.

(2) In addition to those records that are exempted from being open to inspection by the general public under Code Section 47-1-14 and except as otherwise provided in this subsection, an eligible large retirement system may in its discretion treat as confidential and withhold from public inspection and disclosure all information prepared or provided by the issuer of a potential or actual alternative investment or prepared by or for an eligible large retirement system or otherwise relating to a potential or actual alternative investment and held by an eligible large retirement system and may agree in making an alternative investment to treat such information as confidential and withhold it from public inspection and disclosure.

(3) Notwithstanding the provisions of paragraphs (1) and (2) of this subsection, any public retirement system created by this title, other than by Chapter 5 of this title, shall make publicly available the following information, but only to the extent the following information is otherwise available or maintained by said retirement system in the normal course and only after a period of one year from the date such records were created:

(A) The name of any alternative investment in which the retirement system has invested; excluding, in the case of an alternative investment in a privately placed investment pool, any information concerning the investments made by such privately placed investment pool;

(B) The date the retirement system first invested in an alternative investment;

(C) The aggregate amount of money, expressed in dollars, the retirement system has invested in alternative investments as of the end of any fiscal quarter;

(D) The aggregate amount of money and the value of any in kind or other distribution, in each case, expressed in dollars, the retirement system received from alternative investments;

(E) The internal rate of return or the result under any other such standard used by the retirement system in connection with alternative investments for the asset class and for the period for which the return or standard was calculated; and

(F) The remaining cost of alternative investments in which the retirement system has invested as of the end of any fiscal quarter.

(4) The provisions of this Code section shall not restrict access to information and records under process of law or by officers otherwise entitled to them for official purposes, but such information and records shall have the same confidential status under process or with such officers as it does in the hands of an eligible large retirement system, and such officers shall respect such confidentiality to the extent consistent with their separate powers and duties.

(5) On the second Monday in March of each year, the director of any public retirement system created by this title, other than by Chapter 5 of this title, shall provide a report to the Governor and the chairpersons of the House and Senate standing committees on retirement detailing the performance of any investments made pursuant to this Code section, including, without limitation, a clear statement of the aggregate loss or profit on such investments for the preceding year. Such report shall also be posted on the retirement system's official website. This paragraph shall not be construed so as to require the disclosure of any information otherwise protected by this subsection.

(g) Unless the information has been publicly released, preinvestment and postinvestment diligence information, including reviews and analyses, prepared or maintained by the eligible large retirement system or by an alternative investment firm shall be confidential and exempted from being open to inspection by the general public pursuant to Article 4 of Chapter 18 of Title 50, except to the extent it is subject to disclosure from the requirements of subsection (f) of this Code section.

(h) The respective boards of trustees of eligible large retirement systems making investments authorized by this Code section shall adopt a code of ethics for the consideration of and investment in and disposition of alternative investments.

(i) Funds invested pursuant to this Code section and any return on such investment shall remain funds of the retirement system. (Code 1981, § 47-20-87, enacted by Ga. L. 2012, p. 211, § 3/SB 402.)

**Effective date.** — This Code section became effective July 1, 2012.

**Editor's notes.** — Ga. L. 2012, p. 211, § 1/SB 402, not codified by the General

Assembly, provides that: "This Act shall be known and may be cited as the 'Employees' Retirement System of Georgia Enhanced Investment Authority Act.'"

## CHAPTER 21

### REGENTS RETIREMENT PLAN

#### Article 1

##### General Provisions

Sec.

47-21-4. Employee and other contributions.

#### ARTICLE 1

#### GENERAL PROVISIONS

##### 47-21-4. Employee and other contributions.

(a) On and after July 1, 2013, each participating employee shall contribute to the optional retirement plan a percentage of his or her earnable compensation as determined by the board of regents.

(b) The University System of Georgia shall contribute to the optional retirement plan on behalf of each participating employee the following:

(1) Prior to January 1, 1997, an amount equal to 4 percent of the participating employee's earnable compensation;

(2) On and after January 1, 1997, and before January 1, 2009, an amount equal to the normal cost contribution determined by the board of trustees in accordance with the provisions of Code Section 47-3-48; and

(3) On and after January 1, 2009, an amount determined by the board of regents after consulting with the state auditor, the director of the Office of Planning and Budget, and the state accounting officer. The board of regents shall review the contribution amount every three years.

(c) The participating employee's contribution required by the provisions of subsection (a) of this Code section may be made by a reduction in earnable compensation or by an employer pickup pursuant to the authority of any applicable provisions of the United States Internal Revenue Code, as amended. The method of contribution provided for in this subsection shall be a privilege for the convenience of employees and no right of action shall accrue to the employee or any company designated to provide such optional retirement plan for errors, omissions, or decisions of any agent of the University System of Georgia regarding deductions under this subsection.

(d) All contributions authorized or required by this Code section shall be paid to the designated companies for the benefit of each

participating employee by the financial officer of the employing institution. (Code 1981, § 47-21-4, enacted by Ga. L. 1990, p. 1811, § 2; Ga. L. 1994, p. 660, § 1; Ga. L. 1996, p. 1244, § 1; Ga. L. 1998, p. 126, § 1; Ga. L. 2008, p. 347, § 2/HB 815; Ga. L. 2013, p. 787, § 1/HB 232.)

**The 2013 amendment**, effective July 1, 2013, in subsection (a), substituted “On and after July 1, 2013, each” for “Each” at the beginning, and substituted “board of

regents” for “board of trustees which shall be not less than 5 nor more than 6 percent” near the end.

## CHAPTER 23

### GEORGIA JUDICIAL RETIREMENT SYSTEM

#### Article 3

##### Membership in the System

Sec.

47-23-43. Preservation of prior rights under this Code section by certain attorneys employed by Legislative Counsel or Department of Law.

Sec.

47-23-105.

irement; compliance with federal income tax laws.

Spouses’ benefits; ceasing spouses’ benefits; vesting; designation of survivors benefits; member who rejected survivor’s benefits may later elect such benefits by paying actuarial cost; applicability.

#### Article 5

##### Contributions

47-23-84. Payment of remainder of accumulated contributions upon death.

47-23-105.1.

Modification of retirement allowance.

47-23-109.

Cessation of retirement allowance for resuming state service; required notification.

#### Article 6

##### Salary, Retirement, Death, and Disability Benefits

47-23-102. Vesting; benefits upon re-

### ARTICLE 3 MEMBERSHIP IN THE SYSTEM

#### 47-23-43. Preservation of prior rights under this Code section by certain attorneys employed by Legislative Counsel or Department of Law.

Any person employed pursuant to Code Section 28-4-3 or 45-15-31 who was subject to the former provisions of this Code section as such existed on June 30, 2005, shall retain all rights and obligations as existed on that day. Such persons shall be subject to all provisions of this chapter applicable to solicitors-general of the state courts. Employer contributions shall be paid by the respective employers under

such Code sections. (Code 1981, § 47-23-43, enacted by Ga. L. 1998, p. 513, § 1; Ga. L. 2000, p. 131, § 1; Ga. L. 2005, p. 57, § 1/HB 492; Ga. L. 2009, p. 315, § 1/HB 210; Ga. L. 2011, p. 504, § 1/HB 144.)

**The 2011 amendment**, effective May 11, 2011, part of an Act to revise, modernize, and correct this title, in the first sentence, inserted “who was”, inserted

“former” near the beginning, inserted “as such existed” near the middle, and substituted “existed” for “exist” near the end.

## ARTICLE 5

### CONTRIBUTIONS

#### **47-23-84. Payment of remainder of accumulated contributions upon death.**

If, upon the deaths of a retired member and, if applicable, a designated survivor, the total monthly benefits paid to the retired member and to any designated survivor do not equal or exceed the retired member’s accumulated contributions at the time of his or her retirement, the difference shall be refunded to the person designated in writing by the member or the designated survivor, whichever was the last to receive a monthly retirement benefit under this Code section. If no person has been so designated, the amount shall be paid to the estate of the member or the designated survivor, whichever was the last to receive a monthly retirement benefit under this Code section. (Code 1981, § 47-23-84, enacted by Ga. L. 2012, p. 669, § 1/HB 250.)

**Effective date.** — This Code section became effective July 1, 2012.

## ARTICLE 6

### SALARY, RETIREMENT, DEATH, AND DISABILITY BENEFITS

#### **47-23-102. Vesting; benefits upon retirement; compliance with federal income tax laws.**

(a) The right of a member to receive benefits under this chapter shall vest after the member obtains ten years of creditable service; provided, however, that no member shall receive a retirement benefit prior to attaining the age of 60 years. Except as otherwise provided in Article 2 of Chapter 1 of this title, a member’s accumulated contributions shall be 100 percent vested and nonforfeitable at all times. Any member retiring on or after July 1, 1996, and any member who was retired on July 1, 1996, with 16 years or more of creditable service shall receive a benefit equal to 66.66 percent, plus 1 percent for each year of creditable service over 16 years, of the member’s salary; provided, however, that

no member shall receive more than 24 years of creditable service. Any member retiring with less than 16 years of creditable service may retire at a reduced benefit pursuant to Code Section 47-23-103. Normal retirement age under this retirement system shall be the date the member has reached age 60 years of age, provided that he or she has at least ten years of creditable service. For purposes of Section 402(1) of the federal Internal Revenue Code regarding distributions from governmental plans for health and long-term care insurance for public safety officers, normal retirement age shall be the earliest date when the member has satisfied the requirements for a retirement under this or the predecessor retirement system. Except as otherwise provided in Article 2 of Chapter 1 of this title, a member's right to his or her retirement allowance is nonforfeitable upon attainment of normal retirement age. Any member who was retired on July 1, 1996, with more than 16 years of creditable service shall receive in July, 1998, a one-time benefit payment equal to two times the product of 1 percent of the salary paid to such judge at the time of his or her retirement multiplied by the number of years of creditable service in excess of 16 years.

(b) The board is authorized to provide by rule or regulation for the payment of benefits to members or beneficiaries of the retirement system at a time and under circumstances not provided for in this chapter to the extent that such payment is required to maintain the retirement system as a qualified retirement plan for the purposes of federal income tax laws and regulations. (Code 1981, § 47-23-102, enacted by Ga. L. 1998, p. 513, § 1; Ga. L. 2009, p. 947, § 33/HB 202; Ga. L. 2013, p. 681, § 1/SB 142.)

**The 2013 amendment**, effective July 1, 2013, designated the existing provisions as subsection (a) and added subsection (b).

**47-23-105. Spouses' benefits; ceasing spouses' benefits; vesting; designation of survivors benefits; member who rejected survivor's benefits may later elect such benefits by paying actuarial cost; applicability.**

(a)(1) Except as otherwise provided by subsection (b) of this Code section, each member of this retirement system shall pay for spouses' benefits an employee contribution of 2 1/2 percent of the salary paid to such member. Such contribution shall be in addition to that required under Article 5 of this chapter. The employing unit shall be authorized to deduct monthly the employee contributions required for spouses' benefits. Such contribution shall cease after the member has paid the contribution for a total of 16 years.

(2) Upon the death of a member who is subject to this subsection and who has attained a minimum of ten years of creditable service

and at least 60 years of age, the surviving spouse of such member shall be entitled to receive for life a monthly sum equal to 50 percent of the retirement benefit which the member was receiving at the time of the member's death, if retired at such time, or which would have been payable to the member had the member retired as of the date of the member's death.

(3) Upon the death of a member who became a member by operation of Code Section 47-23-40 and who has attained a minimum of ten years of creditable service but had not attained age 60 at the time of death, the surviving spouse of such member shall be entitled to receive for life a monthly sum equal to 50 percent of the retirement benefit the member would have received had the member continued in service and retired at age 60.

(4) Upon the death of a member other than a member who became a member by operation of Code Section 47-23-40 and who has attained a minimum of ten years of creditable service but had not attained age 60 at the time of death, the surviving spouse of such member shall be entitled to receive for life a monthly sum equal to 50 percent of the retirement benefit the member would have received as if the member were age 60 on the date of death based on the number of years of creditable service the member had on the date of death.

(b)(1) Any member of this retirement system shall have the right to reject the spouses' benefits provided by this Code section by notifying the board in writing of such rejection on a form to be supplied by the board within 90 days after becoming a member.

(2) Any member who becomes a member of this retirement system by operation of Code Section 47-23-40 who rejected the spouses' benefits provided by this Code section pursuant to paragraph (1) of this subsection may subsequently obtain such benefits by so notifying the board in writing and by tendering all amounts which such member would have paid pursuant to subsection (a) of this Code section if such member had not rejected such benefits, together with regular interest thereon.

(3) Any member, other than a member who became a member of this retirement system by operation of Code Section 47-23-40, who rejected the spouses' benefits provided by this Code section pursuant to paragraph (1) of this subsection may subsequently obtain such benefits by so notifying the board in writing and by tendering to the board of trustees such amount as determined by the actuary as necessary to grant such benefit without creating any accrued actuarial liability as to this retirement system. In order to vest for spouses' benefits, the member must have at least ten years of membership service.

(c) If the spouse of a member dies or if a member ceases to be married, then such member who has elected to obtain spouses' benefits pursuant to this Code section may cease making the employee contributions for spouses' benefits. Such member shall notify the board in writing to cease deducting such employee contributions. Such notice shall be given within 90 days after the date of the death of the spouse or after the date the member ceases to be married; and, upon such notification, no further deductions shall be made. When a member ceases to make such employee contributions, there shall be no return of such contributions previously made by such member.

(d) Any member of this retirement system who rejects spouses' benefits coverage or who ceases such coverage pursuant to subsection (c) of this Code section because such member was unmarried at the time of such rejection, because such member's spouse died, or because such member ceased to be married shall have the option to elect spouses' benefits within 90 days after becoming married or remarried, as the case may be. Any member so electing must make the necessary contributions for spouses' benefits coverage for a total of at least ten years with regular interest thereon in order for such member's spouse to qualify for the spouses' benefits provided for by this Code section.

(e) In order to vest for spouses' benefits, the member must have made the employee contributions for such benefits for at least ten years.

(f) Any member at the time of retirement who has met the conditions of subsection (e) of this Code section may designate a natural person other than his or her spouse to receive a survivors benefit in the same manner and under the same conditions as provided for spouses' benefits; provided, however, that any person so designated shall receive a benefit equal to the normal spouse's benefit actuarially reduced in accordance to such person's and the member's projected life spans. Such actuarial adjustment shall be computed at regular interest upon the basis of the mortality tables and rates of interest last adopted by the board of trustees. Such benefit shall not exceed 50 percent of the member's monthly retirement benefit.

(g) The provisions of this Code section shall apply only to persons who become members of this retirement system prior to July 1, 2012. (Code 1981, § 47-23-105, enacted by Ga. L. 1998, p. 513, § 1; Ga. L. 1999, p. 20, § 1; Ga. L. 2000, p. 131, § 1; Ga. L. 2005, p. 535, § 38/HB 460; Ga. L. 2012, p. 669, § 2/HB 250.)

**The 2012 amendment**, effective July 1, 2012, added paragraph (b)(3) and subsection (g).

**47-23-105.1. Modification of retirement allowance.**

(a) The provisions of this Code section shall apply only to persons who become members of this retirement system on or after July 1, 2012.

(b) A member may make a one-time election to convert the retirement allowance otherwise payable to him or her into a modified retirement allowance of equivalent actuarial value and designate a natural person to receive a survivors benefit in accordance with one of the options set forth in paragraphs (1), (2), (3), or (4) of this subsection. Such retirement allowance shall be actuarially reduced in accordance to the designated survivor's projected life span. Such actuarial adjustment shall be computed upon the basis of the mortality tables and rates of interest last adopted by the board of trustees. Such election may be made only after the member has become eligible to retire and before the first payment of his or her retirement allowance normally becomes due. Such election shall be irrevocable except as otherwise provided in this Code section.

(1) Option one, known as the 100 percent joint and survivor option, shall consist of a reduced retirement allowance which is payable during the life of the retired member and which, upon his or her death, shall be continued at the same rate throughout the life of and paid to the designated survivor.

(2) Option two, known as the 66 2/3 percent joint and survivor option, shall consist of a reduced retirement allowance which is payable during the life of the retired member and which, upon his or her death, shall be continued at the rate of two-thirds the reduced retirement allowance throughout the life of and paid to the designated survivor.

(3) Option three, known as the 50 percent joint and survivor option, shall consist of a reduced retirement allowance which is payable during the life of the retired member and which, upon his or her death, shall be continued at the rate of one-half the reduced retirement allowance throughout the life of and paid to the designated survivor.

(4) Option four, known as the pop-up option, shall be the election of options one, two, or three, with the added provision that in the event the designated survivor predeceases the retired member, the retirement allowance payable to the retired member after the death of the designated survivor shall be equal to the maximum retirement allowance which the retired member would have been entitled to receive under this chapter had such election not been made.

(c) In the event a member is not married at the time he or she retires and the retired member does not elect a survivor's option and such

member subsequently marries, the retired member may elect to begin receiving an actuarially reduced benefit of equivalent value and establish on behalf of the newly acquired spouse an option under this Code section. Such election shall be made within six months after the marriage.

(d) In the event a retired member makes an election under subsection (b) of this Code section on behalf of a spouse and such spouse predeceases the retired member and the retired member subsequently remarries, the retired member may elect to begin receiving an actuarially reduced benefit of equivalent value and establish on behalf of a new designated survivor pursuant to an option under this Code section.

(e) In the event a retired member makes an election under subsection (b) of this Code section on behalf of a spouse and a final judgment of complete divorce from the spouse is entered, then:

(1) The retired member may elect to continue the optional allowance with the former spouse designated to receive all amounts and benefits upon the death of the retired member; or

(2) The retired member may revoke the appointment of such spouse as a beneficiary; provided, however, that in such event the retirement benefit received by the retired member shall not increase. Such revocation may be made at any time after the entry of the final judgment of divorce. If the retired member elects to revoke the election, the spouse shall be treated in the same manner as if he or she had predeceased the retired member under subsection (d) of this Code section.

(f) If an active vested member of this retirement system dies and is survived by a legal spouse, such spouse shall receive a benefit as if the member has retired on the date of his or her death and had elected option three. (Code 1981, § 47-23-105.1, enacted by Ga. L. 2012, p. 669, § 3/HB 250.)

**Effective date.** — This Code section became effective July 1, 2012.

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2012, a period

was added at the end of the third sentence of subsection (b) and “as if” was substituted for “as is” in the last sentence of paragraph (e)(2).

#### **47-23-109. Cessation of retirement allowance for resuming state service; required notification.**

(a) Except as provided in subsection (b) of this Code section, if any retired member returns to the service of the state in any position, including, without limitation, service directly or indirectly as or for an independent contractor, except as a member of the General Assembly, his or her retirement allowance shall cease. Upon cessation of such

service, the retired member, after proper notification to the board, shall receive the same retirement allowance which he or she was receiving prior to returning to state service, calculated with any increases granted during the period of compensation.

(b) The retirement allowance of a retired member who returns to the service of the state in any position, including, without limitation, service directly or indirectly as or for an independent contractor, other than as a member of the General Assembly shall not cease, provided that such member performs no more than 1,040 hours of such service in any calendar year.

(c) Any state entity that employs a retired plan member, other than for service in the General Assembly as provided in subsection (a) of this Code section, shall within 30 days of the employee's accepting employment notify the board in writing stating the name of the plan member and the number of hours the employee is expected to work annually and shall provide such other information as the board may request. If the retired plan member performs more than 1,040 hours of work in any calendar year, the employer shall so notify the board as soon as such information is available. Any employer that fails to notify the board as required by this subsection shall reimburse the retirement system for any benefits wrongfully paid. It shall be the duty of the retired plan member seeking employment by the employer to notify the employer of his or her retirement status prior to accepting such position. If a retired plan member fails to so notify the employer and the employer becomes liable to the retirement system, the plan member shall hold the employer harmless for all such liability. (Code 1981, § 47-23-109, enacted by Ga. L. 1998, p. 513, § 1; Ga. L. 2009, p. 752, § 1/SB 98; Ga. L. 2009, p. 947, § 34/HB 202; Ga. L. 2013, p. 681, § 2/SB 142.)

**The 2013 amendment**, effective July 1, 2013, deleted "who has not yet reached normal retirement age" following "member" near the beginning of the first sentence of subsection (a); in subsection (b),

deleted "who has reached normal retirement age and" preceding "returns" near the beginning and inserted a comma following "cease" in the middle; and added subsection (c).







